



## Principles to Support Effective Governance

NCFNG  
NATIONAL CENTRE  
FOR FIRST NATIONS  
GOVERNANCE



CNGPN  
CENTRE NATIONAL  
POUR LA GOUVERNANCE  
DES PREMIÈRES NATIONS

Discussion Document  
National Centre for  
First Nations Governance  
Summer, 2008

National Centre for First Nations Governance

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Summer 2008

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- NCFNG Governance Best Practices Steering Committee
- First Nation individuals from across the country
- Satsan whose vision of a “new memory in the minds of our children” brings clarity and passion to our work

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## Executive Summary

**Introduction:** The National Centre for First Nations Governance (NCNFG or the Centre) is a national, independent, First Nations-controlled organization dedicated to supporting First Nations as they work to implement their inherent right to self-governance. The Centre is founded on a common mission and vision, and a set of shared values. To achieve this vision, the NCFNG develops programs, services and tools that are culturally enriched and empowered by First Nations traditions, customs, laws and inherent governing powers. The development of a set of shared principles that clearly articulate our approach to effective governance is one such tool.

**Background:** The Centre is designed to assist all First Nations no matter where they sit on the spectrum of implementing their inherent right to self-governance. The Centre works with First Nations to ensure that the traditional dimensions of First Nations' experience form the basis of principles and values to guide contemporary systems of governance. Early on in our organizational history we determined that an assessment tool would help us set out a governance action plan for our First Nation partners. The resulting Governance Capacity Assessment (GCA) is designed to evaluate current governance capacity with the objective of identifying strategic steps that can be taken to advance the selected communities governance objectives. In our work to develop the GCA we identified 17 essential principles which we grouped into five components of governance: The People, The Land, Laws and Jurisdiction, Institutions, and Resources. This discussion document is a presentation of our work.

**Effective Governance:** The Centre defines governance as *the traditions (norms, values, culture, language) and institutions (formal structures, organization, practices) that a community uses to make decisions and accomplish its goals. At the heart of the concept of governance is the creation of effective, accountable and legitimate systems and processes where citizens articulate their interests, exercise their rights and responsibilities and reconcile their differences.* Embedded in this definition is a First Nations title and inherent rights strategy. This strategy involves organizing at the community level with a clear vision and an unwavering commitment to specifically defined goals and objectives designed to protect and realize First Nations title and rights.

**The Governance Principles:** In this discussion, a principle is considered a strategy by which we bring the Centre's values to life, fulfill our mission and therefore move closer to our shared vision. Strategies work best when everyone has a solid understanding of what those strategies are. The governance principles are intended as a step toward sharing our strategies and making the ways in which we work explicit.

It is important to stress that the principles set out here are not intended to refer to effective governance in a general sense. While they have some applicability to all contexts, they are intended to refer to governance in the context of First Nations. Significant attention was invested in ensuring the language of the principles has relevance in First Nation communities and that the principles convey the inherent importance of the inter-relationships between effective governance, the People and the Land. The principles are infused with and drawn from our language, culture, values and sense of spirituality. This allows us to speak about the principles as an authentic guide. They are intended to make general or universal principles of governance

specific to each First Nation context. Each culture will determine for itself how the principles are brought to life in their specific context.

The table below sets out the NCFNG five components and 17 principles of effective governance. Within the document the significance of and relationships between the components and the principles are discussed.

GOVERNANCE COMPONENTS	GOVERNANCE PRINCIPLES
<b>THE PEOPLE</b>	<ul style="list-style-type: none"> <li>• Strategic Vision</li> <li>• Meaningful Information Sharing</li> <li>• Participation in Decision Making</li> </ul>
<b>THE LAND</b>	<ul style="list-style-type: none"> <li>• Territorial Integrity</li> <li>• Economic Realization</li> <li>• Respect for the Spirit of the Land</li> </ul>
<b>LAWS and JURISDICTION</b>	<ul style="list-style-type: none"> <li>• Expansion of Jurisdiction</li> <li>• Rule of Law</li> </ul>
<b>INSTITUTIONS</b>	<ul style="list-style-type: none"> <li>• Transparency and Fairness</li> <li>• Results-Based Organizations</li> <li>• Cultural Alignment of Institutions</li> <li>• Effective Inter-Governmental Relations</li> </ul>
<b>RESOURCES</b>	<ul style="list-style-type: none"> <li>• Human Resource Capacity</li> <li>• Financial Management Capacity</li> <li>• Performance Evaluation</li> <li>• Accountability and Reporting</li> <li>• Diversity of Revenue Sources</li> </ul>

**The Principles in Action:** The Centre believes that all First Nations have the ability to enact all or some of these principles no matter where they sit on the continuum of self-governance. All First Nations wrestle with significant constraints such as a lack of funding, the restrictions of the *Indian Act*, poverty, etc. yet effective governance is a foundation upon which our development aspirations must be built. Therefore, we must engage with these principles – our long term success depends on it. We have developed this discussion document in the expectation that the principles set out in it will have practical application for our citizens. We conceive this to be a living document that will evolve as we continue to learn from working with our communities.

**Conclusion:** The Centre believes the principles of effective governance blend the ancient principles and values of our respective Nations with the modern realities of self-governance. We look forward to engaging with our communities in leadership dialogues to strengthen the principles framework and create a valuable tool to realize the NCFNG vision – rebuilding our Nations through effective governance.

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## Introduction

The National Centre for First Nations Governance (NCFNG or the Centre) is a national, independent, First Nations-controlled organization dedicated to supporting First Nations as they work to implement their inherent right to self-governance.

The Centre has a two-pronged mandate. First, it is designed to support First Nations as they seek to implement their inherent rights of self-governance and second, it assists First Nations in the further development of their day-to-day government operations. This means the Centre supports First Nations in their efforts to implement and put into practice their jurisdictional authorities and to achieve the well-designed characteristics of effective governance. The Centre is founded on a common mission and vision, and a set of shared values.

The NCFNG is a shared asset for indigenous people; a place for ideas, workable models, insight, professional development and advice. In the fight for self-governance, resources like the NCFNG are crucial.

Stephen Cornell  
Native Nations Institute

**Mission:** *We support First Nations by providing relevant and innovative knowledge and development of governance services, products and events.*

**Vision:** *Rebuilding our Nations through the exercise of our inherent right to self-determination through strong, stable and culturally relevant systems of government.*

**Values:** *We are guided by the traditional values of respect, trust, honesty and recognition among ourselves and in our efforts to support the needs of First Nations in assuming their inherent right to self-determination and achieving the attributes of self-governance.*

To achieve this vision, the NCFNG develops programs and services that are culturally enriched and empowered by First Nations beliefs, traditions, laws and inherent governing powers. However, the Centre does not impose a single approach to governance. The Centre believes that governance is an activity that can only be undertaken by citizens who have determined how their own governance should be organized and exercised so they believe in it, trust it and own it.

The Centre is also based upon the principle of choice. First Nations choose to draw upon its services as they see fit and are not required to do so. It is consistent with that principle of choice that this document and the principles within it are offered up for consideration. Citizens may choose, or choose not, to use them. That said, the Centre believes there is a unique approach that underlies effective First Nations governance. The purpose of the paper is to clearly and simply outline what that approach is. We believe there is valuable learning in the principles presented here and look forward to the dialogue that this discussion paper will produce.

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## Background

The National Centre for First Nations Governance (NCFNG) is a young organization. From the establishment of an advisory group in 2004 to a national body opening the doors of its regional offices across the country in 2007, growth has been strong and swift.

The Centre works with First Nations to ensure that the traditional dimensions of First Nations' experience form the basis of principles and values to guide contemporary systems of governance.

The NCFNG provides services in four core business lines:

- Governance Advisory Services
- Professional Development Services
- Land, Law and Governance Research
- Public Education and Communications

The Centre's services are designed to assist all First Nations, no matter where they sit on the spectrum of implementing their inherent right to self-governance. The Centre works with First Nations to ensure that the traditional dimensions of First Nations' experience form the basis of principles and values to guide contemporary systems of governance.

The NCFNG mission, visions and values guide the work of the Centre. Business and strategic plans and a growing body of commissioned research further inform that work. Much has been accomplished in a short time.

However, while the core mandate of the Centre is to support and enhance First Nations' abilities to govern, there is not yet one document that summarizes and shares how we approach that work. This is an interesting place to find ourselves.

Early on in our organizational history (late 2006), NCFNG senior staff determined that an assessment tool would help us set out a governance action plan and to help our First Nation partners better understand their current circumstances. The resulting Governance Capacity Assessment (GCA) is designed to evaluate current governance capacity with the objective of identifying strategic steps that can be taken to advance the selected communities governance objectives.

When we began work on the GCA, we did not have a theoretical framework from which to interpret or draw conclusions about that data once it was collected. In other words, we did not have the frame of reference from which we could complete the assessment. We all had many ideas – but no clear consensus and nothing that could be connected and captured in one document. We needed to have direction and agreement, and so we began the path to this paper.

As with all projects of the NCFNG, we returned to our strategic vision for guidance and recognized that an assessment of effective governance would have to reflect “*our inherent right to self-determination*” and a “*strong stable and culturally relevant system of government.*” We also looked to our recently developed research, most importantly, *The Framework for Title and Inherent Rights Strategy*. This and other of our own documents reinforced the critical importance

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of Nation re-building, and the inherent right of self-governance within any assessment of effective governance.

Next we looked to how others define governance and more importantly effective governance. We looked at guiding documents developed by the United Nations, the Native Nations Institute, the Harvard Project, and the Institute on Governance.

We noted the many similarities and the important differences between these documents and drew on the best and most appropriate to move us toward our vision. A big departure from the other models was our prominent inclusion of principles related to the Land. While many models don't naturally combine Land concepts with governance concepts, we felt this was fundamental for us as First Nations (and for indigenous peoples worldwide). The connection between effective governance and the Land is deep and profound. As stated in *The Framework for Title and Inherent Rights Strategy* referenced above, "*Simply put, Aboriginal title is synonymous with the exclusive right to occupy and use both the land and its resources... Simply put, Aboriginal title rights include the right of a First Nation community to govern how such land is used.*"

Long believing that "*language is power, life and the instrument of culture, the instrument of domination and liberation*"<sup>1</sup> we invested significant time working on the language of the principles so it closely resembled language used in our own communities. This led us to identify 17 essential principles which we grouped into five "components" of governance: The People, The Land, Laws and Jurisdiction, Institutions, and Resources. The components gave us a manageable framework for working with the principles. The names chosen for the components are words that resonate with people in our communities.

There were both informal conversations and formal meetings to develop this work, and every interaction provided valuable feedback and moved us closer to a shared understanding of the emerging framework of the principles. This framework was developed through an open process over time; a process that was very collaborative. This discussion document is the culmination of the work outlined above.

The five components of governance and the principles that flow from them presented in this document represent our shared thinking to date. They are offered as a work in progress and the NCFNG will continue to test the framework through our own research. We will look for community-based projects and partners who also wish to test the framework through their research in practice. As we work with the principles we will learn how they resonate with First Nations across the country. The effective governance framework will be reviewed continually and modified based on our findings.

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<sup>1</sup> Angela Carter, *Shaking a Leg: Collected Journalism and Writing* (1997)

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## Effective Governance

As stated above, the vision of the NCFNG is

*Rebuilding our Nations through the exercise of our inherent right to self-determination through strong, stable and culturally relevant systems of government.*

The principles offered for discussion in this document are intended as a means to achieve that vision, to rebuild Nations through effective governance. Before considering the principles, it is useful to consider what we mean by effective governance.

### Defining Effective Governance

The complexities of governance are difficult to capture in a simple definition.

The World Bank uses the following definition, “*By governance we mean the manner in which power is exercised... in the management of a country's social and economic resources.*”<sup>2</sup> It makes a clear distinction between the political and economic dimensions of governance. The World Bank identifies five components of governance: public-sector management, accountability, legal framework, transparency and information.<sup>3</sup>

Looking forward, being positive, visionary and confident. That is what being self-governing is all about.

Satsan (Herb George)

The Centre’s American sister organization, the Native Nation’s Institute (NNI) states that, “*effective governance is not simply a matter of establishing good government practices. It is a matter also of enlisting citizens as willing, active participants in the effort to build societies that work, empowering them to build those societies in their own ways, and making them feel that the future, to a significant degree, is in their hands.*”<sup>4</sup>

The Institute on Governance, a Canadian non-profit dedicated to the promotion of good governance, defines governance as “*the process whereby societies or organizations make important decisions, determine whom they involve and how they render account.*”<sup>5</sup>

While serving as UN Secretary-General Kofi Annan stated plainly that, “*good governance is perhaps the single most important factor in eradicating poverty and promoting development.*”<sup>6</sup>

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<sup>2</sup> World Bank, *Managing Development - The Governance Dimension*, 1994, Washington, D.C.

<sup>3</sup> [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/HRDG/\\$file/GovConcept-e.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/HRDG/$file/GovConcept-e.pdf) Accessed August 18, 2008

<sup>4</sup> <http://nni.arizona.edu/pubs/AFN02Report.pdf> Accessed August 18, 2008

<sup>5</sup> <http://www.iog.ca/page.asp?pageID=3&htmlarea=home> Accessed August 18, 2008

<sup>6</sup> United Nations, 1998 cited in [http://hdr.undp.org/en/media/hdr\\_2002\\_en\\_complete.pdf](http://hdr.undp.org/en/media/hdr_2002_en_complete.pdf) Accessed August 18, 2008

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And First Nations share this view: a 2001 Ekos poll of more than 1,400 First Nations people found that 71 per cent agreed that “*providing the tools for good governance will improve conditions for economic and social development*”.<sup>7</sup>

Drawing from the teachings of others and the traditions, values and wisdom of our communities the Centre has crafted our own definition of governance where governance is “*the traditions (norms, values, culture, language) and institutions (formal structures, organization, practices) that a community uses to make decisions and accomplish its goals. At the heart of the concept of governance is the creation of effective, accountable and legitimate systems and processes where citizens articulate their interests, exercise their rights and responsibilities and reconcile their differences*”.

Embedded in this definition is a First Nations title and inherent rights strategy. This strategy involves organizing at the community level with a clear vision and an unwavering commitment to specifically defined goals and objectives designed to protect and realize First Nations title and rights.<sup>8</sup>

Good governance is about both achieving desired results and achieving them in the right way... Since the "right way" is largely shaped by the cultural norms and values of the organization, there can be no universal template for good governance. Each organization must tailor its own definition of good governance to suit its needs and values.

Institute on Governance

As stated above, governance is difficult to define simply. However, the need for governance exists anytime a group of people come together to accomplish an end.<sup>9</sup> Governance is the process through which a group of people make decisions that direct their collective efforts. Effective governance is about more than getting the job done. This is particularly true in organizations and communities where values typically play an important role in determining both organizational purpose and style of operation.<sup>10</sup> The process and the principles that support and guide the process are as important as the end product. Effective governance is more than a way to achieve organizational effectiveness; it is an end in itself.

## The Governance Principles

With the work of the Centre rooted our in mission, vision and values, why do we need principles of governance? What additional purpose do we wish them to serve?

A mission statement describes the core work and purpose of an organization. The vision of an organization captures the essence of what that organization is working towards. The vision describes the ideal state that the organization wants to achieve – what things would look like if the mission were fully achieved. The values are how we carry out the mission.

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<sup>7</sup> <http://fngovernance.org/about/faq.htm> Accessed August 18, 2008

<sup>8</sup> *The Framework for an Aboriginal Title and Inherent Rights Strategy*

<sup>9</sup> [http://www.iog.ca/boardgovernance/html/gov\\_wha.html](http://www.iog.ca/boardgovernance/html/gov_wha.html) Accessed August 18, 2008

<sup>10</sup> [http://www.iog.ca/boardgovernance/html/gov\\_whagoo.html](http://www.iog.ca/boardgovernance/html/gov_whagoo.html) Accessed August 18, 2008

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A vision without underlying processes, strategies and organization is a vision that will likely never be realized. Strategies works best when everyone has a solid understanding of what those strategies are. The governance principles are a further step toward sharing our strategies and making the ways in which we work explicit.

In this discussion, a principle is a strategy which when implemented will bring the values to life, fulfill the mission and therefore move the organization closer to the vision. Expressed differently, “a principle signifies a point of probability on a subject which allows for the formation of a norm.”<sup>11</sup> It is the Centre’s belief – drawn from our experience and thinking – that the implementation of these principles will lead to effective governance. This proposition will be tested as we continue to work with the principles in our communities.

It is important to stress that the principles set out here are not intended to refer to effective governance in a general sense. While they have some applicability to all contexts, they are intended to refer to governance in the context of First Nations. They are infused with and drawn from our language, culture, values and sense of spirituality. This allows us to speak about the principles as an authentic guide. They are intended to make general or universal principles of governance specific to each First Nation context. Each culture will determine for itself how the principles are brought to life in their specific context.

The Centre believes that, as with all aspects of governance, all First Nations have the ability to enact these principles (or some of the principles) no matter where they sit on the continuum of self-governance. All First Nations wrestle with significant constraints such as a lack of funding, the restrictions of the *Indian Act*, poverty, etc. yet effective governance is a foundation upon which our development aspirations must be built. Therefore, we must engage these principles – our long term success depends on it.

## ***Relationship of the Principles***

While the five components of governance and the 17 related principles are all important in the realization of effective governance, understanding the relationships between them brings added value to their use. The components of the People and the Land are the most significant and they are inextricably linked. The remaining components and the principles flow from the concurrent primacy of the Land and the People. Laws and Jurisdiction, Institutions, and Resources are all directed by the nature of the relationship between the People and Land.

Effective governance begins with the People. It is only through the People that we can begin to shape the strategic vision that serves as the signpost for the work that those communities and their organizations engage in.

When the People have shared information, collectively made decisions and determined the strategic vision, their attention moves to where they sit – to the Land. Aboriginal title is an exclusive interest in the Land and the right to choose how that Land can be used. It is then through Laws and Jurisdictions that the rights of the Land are made clear. Following from and

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<sup>11</sup> <http://en.wikipedia.org/wiki/Principle> Accessed August 18, 2008

consistent with the Laws and Jurisdictions are the emergence of Institutions and the identification of the Resources required to realize and to ensure the continuity of effective governance. In recognizing that everything begins from and returns to the People’s shared vision, the table below sets out the NCFNG components and principles of effective governance. Following the table, the governance components and each of the principles are summarized including a description and the reasons for their inclusion.

<b>GOVERNANCE COMPONENTS</b>	<b>GOVERNANCE PRINCIPLES</b>
<b>THE PEOPLE</b>	<ul style="list-style-type: none"> <li>• Strategic Vision</li> <li>• Meaningful Information Sharing</li> <li>• Participation in Decision Making</li> </ul>
<b>THE LAND</b>	<ul style="list-style-type: none"> <li>• Territorial Integrity</li> <li>• Economic Realization</li> <li>• Respect for the Spirit of the Land</li> </ul>
<b>LAWS and JURISDICTION</b>	<ul style="list-style-type: none"> <li>• Expansion of Jurisdiction</li> <li>• Rule of Law</li> </ul>
<b>INSTITUTIONS</b>	<ul style="list-style-type: none"> <li>• Transparency and Fairness</li> <li>• Results-Based Organizations</li> <li>• Cultural Alignment of Institutions</li> <li>• Effective Inter-Governmental Relations</li> </ul>
<b>RESOURCES</b>	<ul style="list-style-type: none"> <li>• Human Resource Capacity</li> <li>• Financial Management Capacity</li> <li>• Performance Evaluation</li> <li>• Accountability and Reporting</li> <li>• Diversity of Revenue Sources</li> </ul>

## ***The People***

The People are the foundation of the Nations and are the most important component of effective governance. The People are the citizens of Nations that share language, creation stories, community history and family relationships. They form self-defined and self-governed communities and together they hold collective memories. When individuals gather themselves as communities, they are making intentional, political statements about their past, present and the possibilities of their future.

The NCFNG identifies three principles of effective governance that relate to the People:

- Strategic Vision
- Meaningful Information Sharing
- Participation in Decision Making

These three principles exist when the People are engaged. Through living these principles First Nations ensure their government rests on a solid foundation.

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*Strategic Vision* is the shared, long term dream of the People – the future state that the People hope to achieve collectively. Vision charts the course from where the People are to where they want to be and is relevant to those in the present time and to those in the future seven generations. Strategic vision is the necessary starting point, but it is not sufficient to ensure the complete, proper and effective involvement of the People.

*Meaningful Information Sharing* is critical for the People to realize their vision. Information truly is power and information sharing works to ensure power is also shared. Meaningful information sharing occurs when the exchange of information occurs frequently, openly and in all directions.

*Participation in Decision Making.* First Nations engage their People in decision making in many different ways. The form of that decision making is not important. What is important is that Nations determine the best way(s) for their communities to contribute to important decisions. What matters is that the process of decision making be open, inclusive, appropriate to the community, and understood and endorsed by all members of the community.

When these principles are applied, the outcome is a First Nations government supported by the People, clear in its mandate and held as legitimate. When these principles are not in place, the outcomes may be lack of trust, lack of respect and efforts to undermine government and its leaders. Trust, respect and transparency are essential to effective governance.

## **The Land**

The deep connection to the Land is vital to First Nations. The relationship between the People and the Land is an integral component of First Nations governance. The authority and identity of the Nations come from and are tied to the Land. It is the Land that gives us our deep sense of place and our sense of self. For some Nations the very social structure of the community is embedded in the Land. For example, the eight historic houses (wilp) of the Gitanyow are each stewards of very particular areas of land and water and their authority to govern those territories is rooted in that responsibility.

In recent years, the Canadian courts have finally recognized the integral link between the Land and governance. The inherent right of self-governance concerning land use and occupation is implicit in the Supreme Court of Canada analysis in the *Delgamuukw*<sup>12</sup> decision, and has been affirmed by the Supreme Court of British Columbia in the *Campbell*<sup>13</sup> case. These court decisions acknowledged the concept of Aboriginal title – ownership of the Land itself – in addition to the “right to choose” how Aboriginal title lands are used. In other words, the recognition of Aboriginal title by the courts results in the recognition of First Nations’ inherent right to govern land use.

While this legal position may present challenges to the traditional ways in which First Nations view the Land, it also presents great opportunities to regain a meaningful presence in our traditional territories. It allows us to share in the economy of our traditional territories by fully

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<sup>12</sup> *Delgamuukw v B.C.*, [1997] 3 S.C.R 1010

<sup>13</sup> *Campbell v B.C. (Attorney General)* (2000), 79 B.C.L.R. (3d 73)

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realizing the economic aspects of Aboriginal title. The *Delgamuukw* and *Campbell* decisions demand that other levels of government recognize First Nations' inherent rights to the Land. With that recognition they are obliged to work toward solutions that will reconcile all of the activities that occur on the Land (e.g., traditional practices vs. economic development). For the People, organizing in ways that enables participation in that work and that supports effective consultation and co-management of the Land is a critical responsibility of an Aboriginal title and inherent right strategy.

Our relationship with the Land occurs at both the physical and the spiritual level. But the Land provides for all our needs, including our need for an economy. This relationship gives purpose to our People and our governments – to protect the Land, which in turn ensures the well-being of our People. It is our responsibility to care for the land, just as it cares of us, and our past, present and future relations.

The NCFNG identifies three principles of effective governance that relate to the Land:

- Territorial Integrity
- Economic Realization
- Respect for the Spirit of the Land

When these principles are applied, the outcome is a First Nations government which has a deep physical and spiritual connection to the Land. It is a government that is recognized as having a territory that extends far beyond the arbitrary boundaries of any reserve.

*Territorial Integrity.* Given the irrevocable link between title and governance it is imperative that First Nations organize to illustrate both their historic and present day connections to the Land. There exist significant challenges to this work resulting from land alienation and destruction but it is vital to extend our connection across the historic areas our Nations utilized. Territorial integrity begins with assertion and must be supported by land use mapping and stewardship planning that permit the reclamation of responsibility for decision making.

*Economic Realization.* Effective governments possess the right and the tools to develop their Land into sustainable economies. They realize wealth through participation in resource development and through leveraging those resources to access additional sources of revenue beyond their communities. Aboriginal title includes an inescapable economic component. This is a legal right that First Nations must realize to benefit their citizens and finance their governments. This realization will come through consultation and accommodation that minimize infringement and maximize economic benefits.

*Respect for the Spirit of the Land.* First Nations Peoples are positioned to take back our legitimate place on the Land. This will be accomplished by asserting our inherent rights to protect and preserve the Land and its resources, and by optimizing the economic opportunities the Land provides. These rights are ours through our ancestral role as stewards of the Land. It is through connecting with and honouring the spirit of the Land that our governance strategies remain effective and appropriate.<sup>14</sup>

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<sup>14</sup> *The Framework for an Aboriginal Title and Inherent Rights Strategy*

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## **Laws and Jurisdictions**

Laws and Jurisdictions provide the political framework for the vision. The highest law of the Land must be a constitution as when First Nations are without a constitution, their authority to govern falls under the *Indian Act*. Constitutions may be written or oral, the latter being traditional to First Nations. A constitution publicly codifies a Nation, its character and identity. It articulates the values that unite the People, defines their Land and sets out the structure for their participation. A constitution may drive what institutions are established and what the lines of authority are between those institutions. It may reconfirm specific rights that have never been ceded, surrendered or extinguished. It may set out who can be a member of the Nation, the way the Nation's leaders are selected, and the matters over which the Nation can exercise authority. An accepted and established constitution empowers the rightful lawmakers and facilitates the act of law-making.

When these principles are applied, the outcome is an organized and capable First Nations government whose citizens accept the authority of law because it developed from and reflects their own values.

The NCFNG identifies two principles of effective governance that relate to the Laws and Jurisdiction:

- Expansion of Jurisdiction
- Rule of Law

*Expansion of Jurisdiction* refers to exercising authority beyond the current limited parameters of the *Indian Act*. The expansion of jurisdiction can be done in different ways: through accepting offers of delegated authority, through negotiation, and through exercising the inherent right of self-governance. Authority can be assumed incrementally and gradually, or come suddenly through a significant legislative change or an act of sovereign will. What is important is that jurisdiction is appropriately expanded consistent with achieving the People's vision.

*Rule of Law* in the traditional territory follows when jurisdiction is established. When individuals abide by the laws of the Land they validate the legitimacy of the governing authority. The Rule of Law provides clear instruction on acceptable behaviour – behaviour that benefits the community – and the recourse when behaviour is unacceptable. In a civil society, the Rule of Law exists to minimize conflict, between individuals, corporate entities, and individuals and corporate entities. The latter is critical to the realization of successful economic development projects on First Nation land.

## **Institutions**

When Institutions are built consistent with the Rule of Law they provide the organizational structures for First Nations to successfully operate their communities.

The NCFNG identifies four principles of effective governance that relate to Institutions:

- Transparency and Fairness

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- Results-Based Organizations
  - Cultural Alignment of Institutions
  - Effective Inter-Governmental Relations

Institutions exist to serve the delivery of programs and services that move the People toward the vision. Cultural alignment of institutions helps to ensure that the ways in which that result is achieved respects the social and spiritual values of the People. Equally important as the design and legitimacy of single institutions, are the mechanisms in place to support inter-institutional activity.

*Transparency and Fairness* make certain that First Nations institutions and the ways they operate are understood by the People they are designed to serve. Consolidating and then openly sharing processes and procedures assures citizens that decisions are made fairly. Fairness does not mean that all decisions will be the same, but that set criteria will be applied consistently in making all decisions. It is in the implementation of a policy that its fairness is revealed. Transparency minimizes the opportunity for preferential treatment and the advancement of private interests over public good.

*Results-Based Organizations* are imperative for any governing body to measure the effectiveness of its governance. In measuring the effectiveness of First Nations governance, a key result would be the extent to which the structures have moved the People toward their strategic vision. However, for decades First Nations communities have functioned within organizational structures driven not by their vision, but by federal government funding opportunities. Our institutions have been developed to serve the needs and interests of that government and not our own. The effect is that the People have no authentic connection to the resulting systems and structures of governance. They become frustrated, disengaged and angry. It is only with the *Cultural Alignment of Institutions*, where the organizations are infused with practices and beliefs consistent with the values of the People being represented, that effective governance in First Nations communities will exist.

*Effective Inter-Governmental Relations* maximize the opportunities for communication and effective decision-making while minimizing the opportunities for conflict. Effective inter-governmental relations result in productive and satisfying working relationships where the goal is a “win-win”; the collaborative advancement of the interests of all governments whenever possible.

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## Resources

Sufficient and appropriate Resources are essential for institutions and communities to achieve and sustain their vision. When institutions fall short of what they set out to do, trust is lost and their legitimacy called into question. Institutions are most effective when they are suitably resourced for the activities they are mandated to conduct.

The NCFNG identifies five principles of effective governance that relate to Resources:

- Human Resource Capacity
- Financial Management Capacity
- Performance Evaluation
- Accountability and Reporting
- Diversity of Revenue Sources

All living things require resources to achieve results. First Nations can only achieve effective governance with the right human and financial capacity in place. “Right” in this case means not only sufficient resources but resources that are culturally appropriate. “Resources” in this context refers to resources that communities hold in addition to the Land: information, systems, persons, tools and diverse sources of revenue including the generation of their own sources of income.

*Human Resource Capacity* speaks to the skills and abilities of the people that govern our communities and implement our community programs and services. With the right to govern comes the responsibility to govern well. The expansion of our human resource capacity, including the professional development of the next generation of leaders and managers, is a necessary investment to see that our Nations possess the knowledge, skills and abilities to govern effectively.

*Financial Management Capacity* ensures that our good work is not derailed by an inability to plan for, monitor, and account for financial resources. Financial capacity permits long-term, multi-year planning and proactive decision making. Effective financial management permits communities to plan beyond the arbitrary end of a fiscal year or a federal funding cycle and instead to plan for generations.

*Performance Evaluation* allows for the recognition of achievement, while also shedding light on what adjustments should be implemented when expectations are not being met. Parallel to the significance of evaluating performance, is the need to report results back to the community.

Through rigorous and transparent systems of *Accountability and Reporting* we close the accountability loop by providing citizens and partners with the information they need to participate in informed decision-making.

Expanding the *Diversity of Revenue Sources* is critical to financial management. Historically, First Nations have depended on Canada to provide core funding for programs and services working within the narrow scope of the *Indian Act* and similar limited legislation. Not surprisingly, there are scarce tools and models for working beyond the *Indian Act* and its

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jurisdiction. First Nations must reduce the dependency on any one funding source, and work toward generating their own revenues.

## The Principles in Action

The National Centre for First Nations Governance has developed this discussion paper in the expectation that the principles set out in it will have practical application for our citizens. We conceive this to be a living document that will evolve as we continue to learn from working with First Nations. As stated earlier, we believe that, as with all aspects of governance, all First Nations have the ability to enact all or some of these principles no matter where they sit on the continuum of self-governance.

Looking to our own work within the NCFNG, we believe the principles of effective governance will help us to:

- Articulate how we work to potential First Nation partners and clients
- Articulate how we work to potential funders, donors and those not yet familiar with our work
- Orient new staff to our ways of work
- Support staff working on projects across the country to a consistent standard
- Set priorities in our work with First Nations
- Assess where First Nations are strong and where they could strengthen aspects of their governance
- Build new services and resources for First Nations

Beyond the Centre, as Nations work with the principles they will identify those that have immediate relevance to their communities and those that may be of greater value as their governance systems and structures mature. One Nation may view it as dangerous to place great power in the hands of single individuals, preferring a dispersal of power among multiple leaders, while another may view such power concentrations in single individuals as appropriate and desirable. Another Nation may believe that constituent villages or districts should exercise ample power in their own affairs, echoing long-standing cultural beliefs in the right of kinship-based communities within the Nation to choose their own paths; another may prefer something very different. One Nation may decide that the preservation of language, land, and ceremony will be its priorities, with all decisions tested against them; another may focus its energies on prosperity and on breaking its dependence on outside sources of funds, believing that only then can it truly claim control of its own future.

While the implementation of the principles may vary, ideally they will support the development of effective mechanisms of government appropriate to each Nation: constitutions, sets of offices, legal codes, procedures and agreements with other governments. These are the practical and necessary aspects of governance that confirm who has what rights and what responsibilities, how decisions are made, how disputes are settled, what the law says, and who will do what.

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## Conclusion

One of the four key recommendations that emerged out of the *Forum on Indigenous Leadership in the 21<sup>st</sup> Century* was to “*base all leadership development programs and initiatives on core principles of leadership.*”<sup>15</sup> This was understood to mean that change is to be approached in communities with confidence and with an emphasis on applying the ancient principles and values of our respective nations in new and modern ways.

We believe that the provision of the principles of effective governance is one way to fulfil that recommendation.

We also believe that our communities will engage with us in a leadership dialogue and through that exchange of ideas the principles framework will be strengthened and improved.

Most importantly, we believe that the principles of effective governance will be a valuable tool to realize the NCFNG vision – to rebuild Nations through effective governance.

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<sup>15</sup> [http://fngovernance.org/pdf/NCFNG\\_indigenous-leadership\\_report\\_full.pdf](http://fngovernance.org/pdf/NCFNG_indigenous-leadership_report_full.pdf) Accessed August 18, 2008