

Governance in Canada's Northwest Territories: Emerging Institutions and Governance Issues

Stephanie Irlbacher Fox

University of Cambridge
England and Yellowknife
NT

Introduction

This paper provides an overview of government institutions and key governance issues in the Northwest Territories (NWT), Canada. It is based on the author's PhD fieldwork research, and close to a decade of experience working for Indigenous governments in the NWT on self government and related political development processes. It begins with a description of conceptual categories used throughout. This is followed by a brief sketch of the major institutional regimes structuring governmental authority and governance responsibilities in the NWT. Governance challenges are then described, followed by a concluding section offering questions for consideration in discussions of Circumpolar Governance.

Governments and Governance

Generally, the terms 'government' and 'governance' are used interchangeably. However, the two are distinct. As I have noted elsewhere,

While "government" is an institution, "governance" refers to the stewardship of processes of citizen participation and institutional and societal change over the long term. In other words, governments are institutions or organizations that have the legal authority and associated resources to deliver programs. Governance means to steer and respond to

*institutional and citizen participation in the shared life of a community.*¹

Throughout the paper, I use the term "Indigenous" to designate Indigenous peoples of the NWT in a general sense, rather than constructs of Canadian policy such as "Aboriginal". Where possible, I use the specific designations Indigenous peoples apply to themselves such as Metis, Gwich'in, etc. "Indigenous governments" is another term used to designate governments having exclusive legal responsibilities to and recognition by Indigenous peoples. These are differentiated from public governments – such as territorial, municipal, or federal governments – representing all citizens.

The Northwest Territories: Overview

Located between the territories of Yukon to the West and Nunavut to the East, the Northwest Territories is home to Indigenous peoples: Dene (Gwich'in, Sahtu, Tli Cho, Akaitcho, and Deh Cho peoples), Metis, and Inuvialuit, and non-Indigenous people. The land is rich in minerals and renewable and non-renewable resources, with increased activity in oil and gas exploration and extraction, along with diamond mining occurring since the late 1990's. The NWT has a population of close to

¹ Irlbacher Fox. 2004. Self Government Negotiations and Implementation in Northern Canada: The Yukon. Ottawa: Canadian Polar Commission (Unpublished MS).

42,000 people; half of those are Indigenous peoples; most reside in one of the 32 communities outside of Yellowknife, the territory's capital.² **Appendix A** is a map of the territory divided into various regions associated with Indigenous peoples' traditional territories and land claim agreements.

The Government of the Northwest Territories (GNWT)

The GNWT derives its authority from the *NWT Act*, a federal statute. Unlike Canadian provinces, the NWT government's authority is delegated by Canada rather than Constitutionally entrenched. This not only creates issues of legitimacy for the NWT – some Indigenous peoples argue that the GNWT is merely a federal agent rather than a *bona fide* government – but also stymies GNWT aspirations toward increased economic and financial independence. Unlike Canadian provinces, the territorial government does not own the lands and resources within its boundaries – these instead are owned by Canada, and in regions where land claims have been settled, by Indigenous peoples governments. As a result, resource royalties are paid directly to Canada, as are most taxes. The GNWT has a budget of approximately \$ 950 million per year; more than 85% of it is a direct transfer payment from Canada; the rest is derived from taxes, licenses, *etc.*³ As a result, through its economic development incentives and resource royalty regime, Canada has a more powerful role in influencing economic development in the territory than does the GNWT.

Land Claims and Self Government Agreements

The legal and Constitutional basis for governing in the NWT has changed dramatically over the last 20 years. Canadian courts have recognized that Indigenous peoples in Canada have Aboriginal rights; government policy has evolved in step with court decisions, resulting in establishment of negotiation processes where the content of legally recognized rights are negotiated between Canada and Indigenous peoples. The end result of negotiations over Indigenous peoples rights to occupy and use lands and resources

(including wildlife) are agreements called Land Claims. In a land claim agreement, Indigenous peoples exchange undefined Aboriginal rights for defined rights, land ownership, ongoing obligations of governments, and cash compensation.

In 1984, the Inuvialuit were the first to sign a land claim agreement, followed by the Gwich'in in 1992; and the Sahtu in 1993. The Inuvialuit and Gwich'in are currently negotiating a joint self government agreement with Canada; within the Sahtu region, two communities (Deline and Tulita) have embarked on self government negotiations. The Tli Cho are the first Dene people to negotiate a combined land claim and self government agreement, which is currently awaiting enacting legislation by the Canadian Parliament. The Akaitcho and Deh Cho Dene are each currently in land, resource, and governance negotiations with Canada, as is the NWT Metis Nation, which represents Metis people of the southern part of the NWT.⁴

Land claim agreements recognize ownership and Indigenous participation in lands and resource management within their land claim areas. Agreements describe hunting and trapping rights, and participation on co-management boards which determine uses for lands and waters. In addition, significant cash compensation and other benefits are managed by recognized Indigenous governments on behalf of the people – or beneficiaries – who belong to the claim. These powers and responsibilities combined have significantly increased the responsibilities of Indigenous governments in resource management and related resource and economic policy areas.

Self government agreements are practical arrangement with Canada which recognize the jurisdiction of Indigenous governments over human services such as education, health, justice, and social services.⁵ Self government agreements echo resource co-management principles through new power sharing arrangements between the territorial, federal, and Indigenous governments in law making and administration of human services. Some self government agreements currently being negotiated – such as the Inuvialuit and Gwich'in agreement, and the Deline agreement – contemplate guaranteed Indigenous

² For detailed statistical information on the NWT see gov.nt.ca/statistics.

³ GNWT. 2003. Northwest Territories 2003-2004 Main Estimates. Yellowknife: FMBS.

⁴ Visit gov.nt.ca/MAA for a description of NWT land claim and self government agreements.

⁵ Canada. 1995. Aboriginal Inherent Right to Self Government Policy Guide Ottawa: Supply and Services

representation in public government councils. In exchange, the public governments receive Inherent Right powers – powers far beyond those currently available to local governments.⁶

In self government negotiations, Canada had moved away from defining rights, which was common in land claim negotiations, to what it calls ‘practical arrangements’. Recent agreements, in particular the Tli Cho agreement, show that this is not true.⁷ While the agreements state that the inherent right of self government is not defined, Indigenous peoples are forced to agree to exercise only the aspects of a self government right as described within the agreement.

The powers of Indigenous governments in self government agreements are significant not only for their potential for Indigenous development and delivery of programs and services, but also for the fact that the GNWT, previously recognized solely through federal statute, as a signatory to self government (and land claim) agreements has Constitutionally protected governmental authorities and obligations *vis a vis* Indigenous governments.

Wildlife and Resource Management

Wildlife and resources are managed through four main regimes: a co-management regime established in the Inuvialuit Final Agreement; the Mackenzie Valley Resource Management Act (MVRMA) which connects all co-management boards created through Dene and Dene/Metis land claim agreements through an umbrella legislative and regulatory regime; and the land and resource management responsibilities administered by Canada through the Department of Indian Affairs Northern Affairs Program. The GNWT also has authority over the regulation and management of aspects of land and resource management in the NWT. In addition, “interim measures” agreements reached with Indigenous peoples currently negotiating land

claim agreements allow for their participation in established regimes.⁸

Federal - Territorial - Indigenous Intergovernmental Processes

During May 2000, an Intergovernmental Forum (IGF) was established to facilitate intergovernmental relationships related to governance issues of mutual concern for Canada, the GNWT, and Indigenous governments. The agenda for discussions included territorial devolution, capacity building, economic development, and the financing of Aboriginal governments.

Historically, the NWT government has sought to become a province and enjoy the associated benefits: ownership of lands and resources, allowing it to set broad economic policy and strengthen its position in a variety of areas *vis a vis* the federal government.⁹ GNWT land and resource ownership has generally been opposed by Indigenous peoples who stood only to lose if such a transfer of ownership took place. However, with more than half of the potential ‘land claims’ in the NWT having been settled, the transfer of land and resource ownership and control – through a process called Devolution – is currently being negotiated. In recognition of Indigenous governments’ current and expected jurisdictional responsibilities and role with respect to land ownership and management, Indigenous governments are participating in the devolution negotiations along with Canada and the GNWT.

Governance Issues

Institutional Governance

Reconfiguration of power sharing and increased cooperation among governments and agencies will be the hallmark of institutional change in the NWT in the immediate future. Land claim and self government agreements demand this: Indigenous governments are recognized, and will be developing their capacities to exercise governmental powers at the same time as they focus capital investment and program funding associated with their responsibilities, within their regions, and

⁶ Canada 2002. The Inuvialuit and Gwich’in Self Government Agreement in Principle. Ottawa: Supply and Services; Canada 2003. The Deline Self Government Agreement in Principle. Ottawa: Supply and Services.

⁷ Canada 2003. *Tli Cho Agreement*. Ottawa: Supply and Services.

⁸ For example, interim measures have been reached with Akaitcho, Deh Cho, and NWT Metis peoples.

⁹ Dacks, G. 1990. *Devolution & Constitutional Development in Canadian North*. Vancouver: UBC Press.

among their beneficiaries. This will mean increased cooperation and consultation between and among governments; it will also require governments to make hard decisions about what the priority areas are for exercising governmental powers. Just as the GNWT has developed its governmental authorities over the last 30 years, Indigenous governments will need to carefully strategize and plan how their authorities will be implemented within their own economic, social, and environmental circumstances. It may require that some powers remain with the GNWT for the foreseeable future – or it may mean inter-Indigenous delegation of powers or contracting of services.

All of this means that intergovernmental cooperation will become increasingly important. Entities such as the territory's Intergovernmental Forum – where Canada, the GNWT, and all Indigenous governments discuss issues of territorial importance – and the NWT Aboriginal Summit – a forum for all recognized Indigenous governments – may evolve in future to meet these inter-governmental needs. These intergovernmental organizations are fulfilling functions of governance: mutual consultation and discussion on broad policy which each government will work within its authorities to implement individually, and based on consultation with their respective constituents.

Social Issues

Governmental institutions cannot work without competent, committed staff. Governance cannot be effective unless people have opportunity to participate, and see themselves and their needs and aspirations reflected in the structures and actions of their governments. Because of this, capacity building and social wellness are emerging as critical issues within the NWT – issues critical for all governments.

Indigenous governments have a head start on promoting an active and engaged civil society. This is because Indigenous people in Canada, by virtue of the existence of the colonial structures that permeate so many aspects of their lives (band councils, various consultative committees in communities), have always had to be vigilant in shaping colonial structures to serve their purposes rather than strictly those of government. In the NWT, boards and agencies are legion. Some argue this is because the GNWT has consensus as a cornerstone of its institutional philosophy. Others say that the GNWT's patina of legitimacy is so thin that

without local co-optation through boards and agencies, programs could not be implemented. A primary flaw of the consultation culture that has developed in the NWT is that good people are spread too thin, and eventually burn out, leaving a significant vacuum when they take a break.

Communities broken in various respects by colonization's ongoing impacts require rebuilding in order to develop institutions and environments which foster positive Indigenous ways of being on both personal and community levels. Colonization has created profound deficits: in institutional, social, wellness, and human terms. Social suffering due to colonization's effects is rampant. "Capacity building" is a term widely used in government which neatly separates government responsibility for creating the mess, to focus everyone on ways the government thinks communities should try to fix things. But these efforts require funding, and true to neo-colonial practice, funding is doled out by government in ways that serve its needs, according to its own criteria. Until Indigenous governments achieve sustainable independent income sources for underwriting decolonization, neo-colonial control will prevail.

Integral to personal and community development necessary to support effective governance is achieving positive physical, mental, spiritual, and emotional wellness. Communities suffer from the impacts of colonization that exhibit not only as the poverty of dispossession and its attendant material symptoms, but of the physical expressions of poverty: poor physical health and health ailments. Surveys and studies focusing on wellness problems without attaching these to their material bases do not assist in identifying the real cause: colonization, and the logical approach to a solution: decolonization. Nor do they assist in determining how problems might be addressed, namely through Indigenous controlled, anti-colonial efforts. Sadly, intergovernmental institutions have not placed social and wellness issues on their agendas. The territorial government, other than attempting to coordinate social programs in response to a citizen-developed Social Agenda, has not assigned social planning or social impacts of development as a priority within its overall operations. Indigenous governments possessing adequate resources have instituted programs to address suffering and promote cultural and social vitality; however, within an

ongoing colonial context, it is not surprising that social suffering persists.¹⁰

Economic Development

Land claim and self government agreements requiring Indigenous peoples' participation in economic development has opened up new opportunities for partnerships between Indigenous peoples and various business sectors, as well as increased inter-Indigenous economic cooperation. But there are economic winners and losers: some regions, such as the Tli Cho and Inuvialuit, are seeing significant benefits from development within their traditional areas. These governments have also begun to build significant organizational capacity in order to turn those profits into long term benefits for their members – jobs, scholarships, scheduled cash payouts. Other regions are less fortunate: they may not have settled a land claim or built governmental institutions with the capacity to harness greater long term potential benefits that accompany economic clout paired with governmental responsibilities; or, they may inhabit territories where economic activity is steady but less lucrative due to the types of resources on their lands.

What this means is that there are have, and have-not regions. This has an impact on all aspects of life not only for people within regions, but throughout the territory. The differences in economic power and consequent social impacts, and the reality of checkerboard wealth and capacity could ultimately have destabilizing consequences both politically and economically in the territory. The current proposal for a gas pipeline through the Mackenzie Valley has already begun to bring disparities into sharp relief and foreshadow differences and tensions that should be addressed in the not too-distant future. The Inuvialuit, for example, stand to gain from being part owners in a pipeline that will see resources on their lands reach southern markets. The Deh Cho at most can hope for income from access fees where the pipeline traverses its lands. Not all Sahtu communities stand to gain much from a pipeline at all.

While economic independence will ultimately be the strength of both Indigenous and public governments in the territory, independence will depend in part on ownership of assets such as land and resources; but will also depend on

the effective financing of governments and their ability to rely on resource royalties and taxation rather than strictly on what are often boom and bust resource economies.

Women, Youth, and Elders

In the February 2004 Nunavut election, 2 women were voted to serve in the territory's legislature. Premier Paul Okalik immediately appointed both to Cabinet specifically to send the message that women are welcome and necessary in making policy in Nunavut. In the recent election in the NWT legislature, 2 women were voted in to serve in the NWT legislature. While both are political veterans, neither were elected to serve in Cabinet.

The participation of women in territorial level politics is dismal. Women are politically marginalized, as are issues seen as "women's issues" – such as social wellness. Women do however, fill the top ceremonial spots – there is a woman serving as the territory's Commissioner, for example. However, few senior bureaucrats are women.

Women fare much better within Indigenous governments and organizations. The Dene Nation is headed by a woman, as is the Inuvialuit Regional Corporation. Many women serve as band councilors, Elder advisors, community corporation councilors, and on the boards and executive committees of regional and tribal organizations. In addition, Indigenous governance practices see many women Elders consulted as a matter of course by elected leaders in their regions. It is not unusual to see women as band managers, or as Executive Directors of tribal councils or tribal organizations.

Youth and Elders also enjoy significantly higher participation in Indigenous rather than public governments. For Elders, participating in creating opportunities for youth learning and wellness is an increasing responsibility they are being asked to take. Many Indigenous governments – and some municipal governments - take great care to involve Elders and youth in decision making and decision consultations, and some have established formal roles such as youth councilors and Elder advisory committees.

Ongoing Colonization and the Self Determination of Indigenous Peoples

Not all Indigenous peoples have a land claim or self government agreement; and not all land

¹⁰ See www.irc.inuvialuit.org for details of their social programs as one example.

claims and self government agreements will necessarily include wealth generating resources within the short or long-terms. At the same time that Indigenous peoples negotiate agreements with Canada with the goal of getting out from under colonial practices – such as the Indian Act, or the GNWT administering governmental responsibilities which rightfully lie with Indigenous governments – agreement implementation is still subject to a colonial orientation existing with Canada's bureaucracy. The most damning evidence has recently come from the Canadian Auditor General. An arms-length agency of the federal government, the Auditor General's office scrutinizes the practices of Canada in the conduct of its affairs and makes recommendations on improvement. Its report of February 2004 had this to say about how Canada approaches implementation of land claim agreements:

...[The Department of Indian Affairs] seems focused on fulfilling the letter of the land claims implementation plans but not the spirit. Officials may believe that they have met their obligations, but in fact they have not worked to support the full intent of the land claims agreements.¹¹

Rights are meaningless if they are not implemented. As I have written elsewhere, to be implemented, appropriate mechanisms enlivening rights to their potential must be in place, along with the conditions which allow those mechanisms to flourish.¹² It is not enough to have an agreement that sets out Indigenous peoples rights. It is not enough to provide a bare-bones financing package to an Indigenous government in order to implement mere minimum obligations of a land claim. It is necessary to have these things, coupled with conditions in which Indigenous governments may fulfill both their governmental responsibilities and governance responsibilities effectively: adequate financing, along with independent sources of income generation, and the political recognition and ability to undertake long term, strategic economic and

social decisions for the benefit of their members, for generations to come.

Lessons for Circumpolar Governance

So what lessons does the experience of the NWT provide for other circumpolar regions? What can be taken from these experiences to inform planning and ideas for effective circumpolar governance? Below I have identified some questions which may help to think through some of the issues.

Indigenous Peoples

Throughout the North, Indigenous peoples are majority and large minority populations. Internationally, Indigenous rights are receiving greater profile and recognition. Can Northern governance be truly effective without full Indigenous participation in decision making? Which countries have made progress in meaningful Indigenous rights recognition and governance participation? Can inter-Indigenous cooperative efforts assist in circumpolar governance capacity building?

Economic Development

How are Northern residents involved in resource and economic management and development? Are participatory mechanisms in place, and are these effective? Are resources used in a way which is sustainable, beneficial to residents, and respectful of other land uses?

Human and Social Development

Does human and social development take priority in economic and resource management and development planning? How might development be integrated effectively into economic and resource extraction planning and projects?

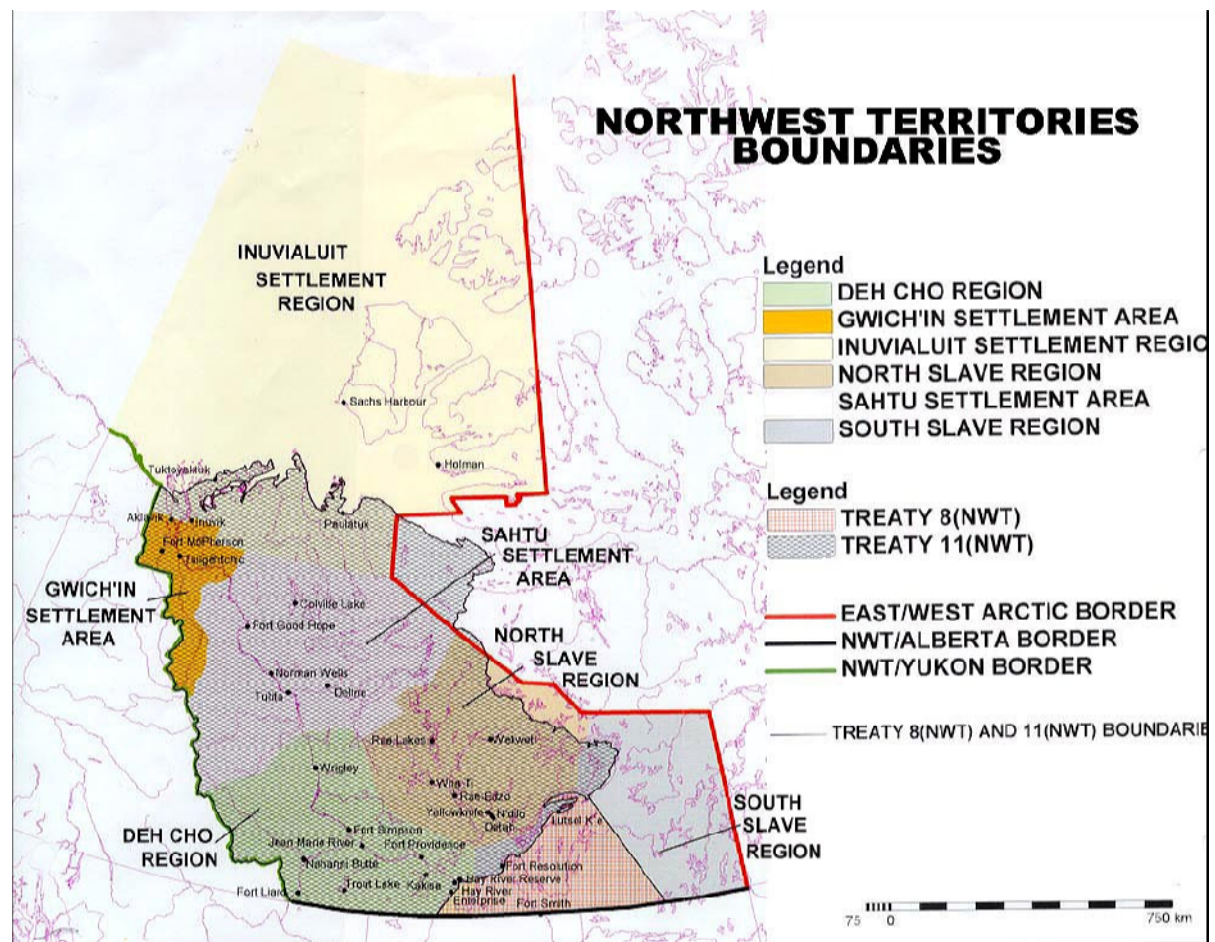
Inclusive Governance: Women, Elders, and youth

Is a government legitimate if women are not involved in decision making? Is a government legitimate if leaders make conscious choices to exclude women from Cabinet? Why are governments seen to be more legitimate if they include women, Elders, and youth?

¹¹ Auditor General of Canada. Feb 2004. "Chapter 8: Transferring Federal Responsibilities to the North." *Report of the Auditor General*. Ottawa: Supply and Services. ss 8.2.

¹² Irlbacher Fox. 2004 (In press) "Rights, Resources, and Financing Indigenous Governments in the NWT, Canada", in Jim McDonald (ed), *Reconfiguring Aboriginal-Federal Relations in Two Federations: Canada and Russia*, Vancouver: UBC Press.

Appendix A: NWT Political Boundaries¹³



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¹³ From GNWT Ministry of Aboriginal Affairs website as at March 10, 2004:
http://www.gov.nt.ca/MAA/index_maps.htm