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Indigenous Self-Determination and Land Rights: *Confronting Trudeau's Fake Reconciliation Promises*

Prime Minister Justin Trudeau poses after receiving a ceremonial headdress while visiting the Tsuut'ina First Nation near Calgary. (Photo courtesy of Jeff McIntosh/ The Canadian Press)

By Russell Diabo

The passage of the Winter Solstice is traditionally a time of annual reflection and renewal. I've been thinking about the façade the Trudeau government continues to perpetrate on Indigenous Peoples and the Canadian public regarding the Liberal's false "***Nation-to-Nation***" relationship and "***reconciliation***" processes.

As Canada's 150th celebration thankfully draws to a close let's recall the history of this country from an Indigenous perspective and what the Trudeau government now states it will "***reconcile***" in a new "***Nation-to-Nation***" relationship in a yet to be announced a "***recognition of rights***" framework.

First of all, Canada, including the **Supreme Court of Canada**, continues to rely on the outdated, racist, colonial concept of the **Christian Doctrine of Discovery** as the basis for Crown sovereignty and territorial claims, despite recommendations from the **1996 Royal Commission on Aboriginal Peoples** (**RCAP**) and the **2015 Truth and Reconciliation Commission** (**TRC**) to stop relying on this doctrine.

Once French and English settlers outnumbered the Indigenous Nations in the mid-1800's, the history of Canada has been about the theft of Indigenous lands and resources and the denial of Indigenous rights and jurisdiction through racist white supremacist colonization. This was entrenched in Canada's first constitution the **British North America Act of 1867**, including **section 91.24**, which is the "***head of power***" where the federal Parliament continues to presume the right to unilaterally pass federal laws over "***Indians and lands reserved for the Indians***".

This is the constitution where the **Indian Act** comes from!

Since confederation in 1867, the federal government has been mostly run by the Liberal Party, although the Conservative Party does get into power from time to time, but the Liberal Party is known by many as the "***natural govern-***

Special points of interest:

- **Indigenius Self-Determination vs. Fake Reconsiliation**
- **Critique of Federal 10 Principles for Recolonization**
- **Indigenous Leaders on No Consultations Regarding Federal 10 Principles**
- **Implementing UNDRIP—What You Should Know**
- **Art Manuel's Books Mandatory Reading**

Inside this issue:

‘Self-Determination’ continued from page 1

Pierre & Justin Trudeau, father & son.

ing party of Canada”.

It was a Liberal Prime Minister, **Alexander Mackenzie**, who led the government in 1876 when—in Canada’s original Termination Plan—the **Indian Act**, was passed to manage reserves, define membership and local governance until “***Indians***” were assimilated into the general Canadian population.

However, the Conservative government of **John A. Macdonald** was re-elected in 1878 to take over implementation of the **Indian Act** and both parties have done so through successive federal governments since confederation.

After about a hundred years of confederation it was also a Liberal government led by **Prime Minister Pierre Trudeau** who proposed the **1969 White Paper on Indian Policy** to terminate Indian rights, which the government had to publicly withdraw in 1971 due to widespread Indian opposition. But in my opinion the tenets of the White Paper remains the federal Liberal Plan implemented by successive Liberal Leaders, including Pierre’s son, **Prime Minister Justin Trudeau**.

In 1973, **Prime Minister Pierre Trudeau** imposed the modern federal land claims policies to extinguish Indian land rights. It is still in use today albeit somewhat amended, with the goal being to extinguish Aboriginal Title, despite recent court decisions recognizing Aboriginal Title and condemnation of federal extinguishment policy from various United Nations Human Rights Bodies.

“Prime Minister Justin Trudeau is still pursuing the de facto extinguishment of Aboriginal Title through his father’s federal Comprehensive Claims Policy”

Prime Minister Justin Trudeau is still pursuing the de facto extinguishment of Aboriginal Title through his father’s federal Comprehensive Claims Policy.

During negotiations in 1981, Canada’s new draft constitution first included a section referring to Aboriginal and Treaty rights, but then was deleted at the request of the Premiers of Alberta and Saskatchewan. It was pressure from Indigenous Peoples and sectors of Canadian civil society who succeeded in getting the Prime Minister, the Premiers and Territorial Leaders to accept the final wording of section 35: “***The existing aboriginal and treaty rights of Aboriginal peoples are hereby recognized and affirmed***”.

The word “***existing***” had been added to the final version of the section 35 clause from the previous version of the Aboriginal and Treaty rights clause before it was deleted during negotiations between the Prime Minister and Premiers in 1981.

The Supreme Court of Canada in its 1990 **Sparrow** decision interpreted section 35 as meaning Aboriginal and Treaty rights that “***existed***” when the **Constitution Act 1982**, became law on April 17, 1982, are “***recognized and affirmed***” and not the rights that were previously extinguished by the Crown.

Former PM Chretien & current PM Trudeau

Under Canadian law the courts have held that pre-1982, the Crown could unilaterally extinguish Aboriginal rights. The 1990 **Sparrow** decision sets out a legal test for Crown governments asserting that an Aboriginal right has been extinguished. The Crown has to show the extinguishment was “***clear and plain***”.

The Supreme Court of Canada has not yet ruled if self-government is an Aboriginal right within the meaning of section 35 in Canada’s constitution.

In 1995, taking advantage of the legal and political uncertainty of section 35 rights, it was a Liberal ***Prime Minister***, ***Jean Chretien***, who co-opted the term “***inherent right to self-government***” and imposed an Aboriginal Self-Government Policy that essentially converts **Indian Act** Bands into municipal type govern-

'Self-Determination' continued from page 2

ments at the bottom of Canada's Federation through a "***harmonization of laws***" process, placing the federal and provincial governments jurisdiction and laws on top of "***self-governing***" communities.

The federal self-government policy clearly states that "**The inherent right of self-government does not include a right of sovereignty in the international law sense**". This is the policy hundreds of **Indian Act Band Councils** are now funded to negotiate under to "***go beyond the Indian Act***" and this is the policy the recent **Bill C-61 Anishinabek Nation Education Agreement Act** was negotiated under to become federal law.

Despite all of **Prime Minister Justin Trudeau's** rhetoric of a "***Nation-to-Nation***" relationship and a "***reconciliation***" process, the Liberal Termination Plan developed previously by **Prime Minister Pierre Trudeau** and then **Prime Minister Jean Chretien** remains based on the twin goals of 1) assimilating Indigenous First Nation Peoples through the continued application of the **Indian Act** (as amended) and related First Nations legislation such as the **First Nations Fiscal Management Act** and the **First Nations Land Management Act**, until status Indians marry out and become legally extinct; or agree to opt out of the **Indian Act** by 2) Terminating, their pre-existing sovereignty and land rights by getting Indigenous First Nation Peoples to consent to negotiate agreements through the federal land claims and self-government policies, which are based on federal one-sided interpretations of section 35 Aboriginal and Treaty rights and include seriously prejudicial federal pre-conditions to negotiations.

It seems the previous federal pre-conditions from the land claims and self-government policies have now been re-written into the **10 federal principles for Indigenous Relationships** released in July 2017, which are also now being used by the Trudeau government for negotiations, agreements and funding. **[*Look at page 7 for a critique of the federal 10 Principles*]**

Right of Indigenous Self-Determination Being Hijacked by Trudeau

The most important right recognized in the **United Nations Declaration on the Rights of Indigenous Peoples** (**UNDRIP**) is the right of Indigenous Peoples to self-determination. This is now enshrined in **Article 3 of UNDRIP**, which replicates **Article 1(1) of the International Covenant on Civil and Political Rights** (**ICCPR**) and the **International Covenant on Economic, Social and Cultural Rights** (**ICESCR**) and makes it clear that this right applies to Indigenous Peoples.

The right to self-determination is the overarching umbrella right; much of its essence is then spelled out further in **UNDRIP**, in regard to land rights, governance and Indigenous **free prior informed consent** (**FPIC**).

Indigenous **FPIC** and therefore Indigenous decision-making power regarding access to their lands and resources has to be recognized if **UNDRIP** implementation is real.

The federal government's "***10 Principles***" do not do that. Rather they attempt to lessen and undermine those fundamental principles of international law.

The Federal "***10 Principles***" are based on the racist, colonial **Christian Doctrine of Discovery**.

In the Federal "***10 Principles***" Canada does not refer to, but continues to rely on its **Constitution Act 1867**, which was unilaterally passed by British parliament as the **British North America Act** 150 years ago and enshrines these colonial sys-

"The most important right recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the right of Indigenous Peoples to self-determination"

Columbus "Discovers" the "New World".

AFN NC Bellegarde & Minister of Indigenous Services, Philpott

'Self-Determination' continued from page 3

tems and structures and the division of powers between the federal and provincial governments, leaving no room for recognition of equal Indigenous jurisdiction and power, absent fundamental (constitutional) reforms, which are not contemplated in the "***10 Principles***".

This is also reflected by the fact that the federal government stated that these "***10 Principles***" are to guide the **federal Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples**, but it is now clear these "***10 Principles***" are also being used in negotiations, agreements & funding such as the **Education Funding Agreements for Elementary & Secondary Education**.

"This draft Cabinet proposal on education funding agreements indicates that the federal "10 Principles" are being used by the federal government as pre-conditions for "Indian" programs and services "

A Policy Co-Development Team comprised of the **Assembly of First Nations**, **National Indian Education Council** and Indigenous and Northern Affairs Canada (now called the **Department of Indigenous Services**) prepared a November 15, 2017, draft "***version 1.14***" of a Co-Developed (**AFN-INAC**) Proposal to the federal Cabinet, which notes that "***In its current form, [BC] First Nation Education Steering Committee does not agree with this document***."

However, page 3 of this version of the Cabinet Policy Proposal: **Transforming First Nations Elementary and Secondary Education** clearly states as "***context***":

> ***The co-development process for developing this proposal is part of an early effort to advance fundamental change. <u>These efforts must be guided by the Principles respecting the Government of Canada's Relationship with Indigenous peoples</u>... [emphasis added]***
>
> ***Self-government agreements recognize the inherent right to self-government for First Nations governments and provides a vehicle for the transfer of funds from the Government of Canada.***

This draft Cabinet proposal on education funding agreements indicates that the federal "***10 Principles***" are being used by the federal government as pre-conditions for "***Indian***" programs and services and the federal government is still using **Jean Chretien's** 1995 so-called "***Inherent Right***" municipal self-government policy to convert Indian Bands into ethnic municipalities and thereby supporting Canada's position that Indigenous First Nation Peoples are Canadian "***minorities***" instead of "***Peoples***" within the meaning of international law.

2014 First Nations Education Rally in Thunder Bay against FNEA.

As the late **Arthur Manuel** put it in **FNSB Volume 13, Issues 1-7, Jan.-July 2015**:

> ***Indigenous Peoples must decide if we are independent sovereign peoples with a right to self-determination or if we want to be a minority under Canada's domestic laws. I raise this broader focus because it is through this lens that we can see how the <u>International Covenant on Civil and Political Rights</u> (ICCPR) and the United Nations Human Rights Committee function. The***

'Self-Determination' continued from page 4

international covenants actually provide Indigenous Peoples with the means to challenge Canada's colonial settlement laws.

On the other hand, Canada takes the position that Indigenous Peoples exercised their right to self-determination [Article 1 ICCPR] as Canadians. Any rights we have are under Article 27 [ICCPR] as a minority with ethnic, religious and linguistic rights within Canada…Canada's position is that only Canada collectively has the right to exercise self-determination despite the fact much of their territories is actually on unsettled Aboriginal lands.

Indigenous Peoples must be consistent on being independent peoples with our own right to self-determination and not buy into being domesticated under Canada's political, economic, social and cultural systems. That is the big issue question that Article 1 in the International Covenant on Civil and Political Rights asks to Indigenous Peoples. Are Indigenous Peoples in Canada entitled to self-determination or are we simply a Canadian minority?

"That is the big issue question that Article 1 in the International Covenant on Civil and Political Rights asks to Indigenous Peoples. Are Indigenous Peoples in Canada entitled to self-determination or are we simply a Canadian minority?"

Indigenous Self-Determination Begins with Decision-Making

Since forming government in 2015, **Prime Minister Justin Trudeau** has borrowed a page from his Liberal predecessors and operated in a non-transparent top-down approach using the **Assembly of First Nations**, the **Provincial-Territorial Organizations** and **local (largely Indian Act) Chiefs** to get consent to the federal changes to policy, law and structure.

The real rights holders are excluded from the **Federal-AFN decision-making process**. The real rights holders are the Indigenous First Nations individuals, families, communities and Nations.

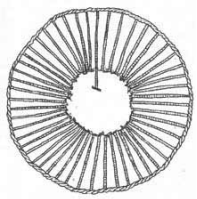
The Trudeau government distinguishes between "***non-self-governing***" **Indian Act** Bands and Aboriginal groups who have signed Termination Agreements (Modern Treaties & Self-Government Agreements). In either category it is the federal government controlling who it recognizes as legitimate Indigenous representatives with authority for making decisions on behalf of the "***non-self-governing***" **Indian Act Bands** or the compromised "***self-governing***" groups under **Modern Treaties and Self-Government Agreements**.

Article 18 – UNDRIP

As far as I know, there hasn't been a review of the federally recognized "***Indigenous Representative Organizations***" mandates and structures by Indigenous First Nation Peoples since these modern organizations were formed from 1969 on to fight against the **1969 White Paper on Indian Policy**.

Haudenosaunee Condolence Cane.

"The UNDRIP standard sets out that Indigenous Peoples through their own procedures and institutions should choose Indigenous representatives. I would suggest looking to your own pre-Indian Act customs, traditions and laws as a guide"



Haudenosaunee Wampum Circle Representing 50 Condoled Chiefs.

'Self-Determination' conclusion from page 5

The **AFN** and **PTO's** are Chiefs' organizations controlled by Ottawa though "***core***" and "***project***" funding, which is arguably why there hasn't been critical analysis from these Chiefs' organizations about the federal "***10 Principles***" for Indigenous Relationships, the lack of transparency by the federal law and policy review and the dissolving of INAC into two new federal departments.

It is long past time that Indigenous First Nation Peoples start organizing locally, regionally, nationally and internationally as **Article 18 of UNDRIP** provides and start demanding Crown recognition of the Indigenous representatives chosen by the People instead of **Indian Act Band Councils**, **regional Chiefs' organizations** and the **AFN structure**. All of these bodies from the band office to the **AFN** in Ottawa are controlled by the federal government in Ottawa.

Article 18 of UNDRIP provides that:

> ***Article 18***
> ***Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. [emphasis added]***

As it stands now the Canadian legal and political system recognize the **Indian Act Chief and Council** as the legal decision-makers and the primary instrument of decision-making is the **Band Council Resolution**.

The **UNDRIP standard** sets out that Indigenous Peoples through their own procedures and institutions should choose Indigenous representatives. I would suggest looking to your own **pre-Indian Act** customs, traditions and laws as a guide to organize to develop and implement your own local and Nationhood level decision-making to develop a self-determination plan outside of the **Indian Act** or federal "***rights recognition***" tables, policies or laws.

In conclusion, I would also suggest **Indigenous Networks** such as the **Defenders of the Land** and **Idle No More** have some minimal capacity to help develop the critical analysis of federal policy and help organize public education forums to assist in developing strategies and actions to implement **UNDRIP** and international Human Rights law to support the right of Indigenous self-determination.

If Indigenous grassroots Peoples don't organize and take action on-the-ground the federal government will likely succeed in its plan to re-colonize Indigenous communities and Nations through its planned federal "***recognition of rights***" framework—currently being prepared behind closed doors—until the Trudeau government is ready to release it either before the 2019 federal election or soon after the election.

Critique of Racist, Colonial Principles on Relationships with Indigenous Peoples Issued by Government of Canada - July 14, 2017

Indigenous peoples, Black Lives Matter activists and settler allies erected a tipi on Parliament Hill after being blocked by police for several hours, June 28, 2017.

Issued by Unsettling150.ca Coordinating Group—Defenders of the Land & Idle No More Networks

As far as we are concerned these federal "*10 principles*" are a 254 year-old continuation of settler attempts to eliminate: 1) Aboriginal Title; 2) the pre-existing right of sovereignty and self-determination of Indigenous Nations; and 3) a fair, just, interpretation of the status of historic Treaties.

The Trudeau government is advancing a racist, colonial position, which is not only inconsistent with the minimum human rights standards contained in the Articles of *UNDRIP*, but in the *Convention on the Elimination of Racial Discrimination*, the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights*.

The following are our specific responses to the racist, colonial "*10 Principles*" and federal commentary. Available online: http://www.justice.gc.ca/eng/csj-sjc/principles-principes.html

Re: Principle 1. The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.

The federal government is controlling and managing the "*federal recognition and implementation*" of Indigenous Peoples right to self-determination and the inherent right to self-government by manipulating the use of the **Assembly of First Nations** and "*regional First Nation organizations*" through a top down national process in order to bypass the legitimate Aboriginal Title & Rights Holders and historic Treaty Nations by maintaining a veto over process, scope of negotiations and funding as set out in the two **AFN-Canada MOU's** on Joint Priorities and Fiscal Relations.

This is not self-government – it is a right of governance – for historic Treaty Nations that was recognized at the time of the treaty making – self-government is a policy of Canada – it is not a legal distinction.

The definition of Indigenous Nation or rights-holding group should be Peoples with an "S" because self-determination is a right of a collective and not as individuals – if the government recognizes the right of self-determination – then it is up to Peoples who have rights to territories and resources – the rights the federal government has set out in Principle 1—language, customs, traditions and historical experience—are rights of "**minorities**" in international law – this is unacceptable to us as Indigenous Peoples.

Our response to the federal comment on the "*key moment*" of historical experience "*assertion of Crown sovereignty*" This is a racist statement - the Crown can-

"The Trudeau government is advancing a racist, colonial position, which is not only inconsistent with the minimum human rights standards contained in the Articles of UNDRIP, but in the Convention on the Elimination of Racial Discrimination, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights"

'Critique 10 Principles' continued from page 7

not assert sovereignty over our territories – this is not recognized by international law. The International Court of Justice in 1972 stated that no government can assert title or jurisdiction over Indigenous Peoples. So, this wrong and unacceptable!

Canada keeps limiting the discussions to Section 35 and says that the rights are only those recognized after 1982 – this is also unacceptable to us as Indigenous Peoples!

Our response to the federal comment that the "*promise*" of section 35 "*reflects articles 3 and 4 of the UN Declaration*" The Declaration is a resolution of the General Assembly – it is not legally binding – what about other international instruments – like the **Convention on the Elimination of Racial Discrimination**? What about the **Covenant on Civil and Political Rights** or the **Covenant on Economic, Social and Cultural Rights** which contain language related to self-determination and the rights of the Indigenous Peoples to make decisions for themselves?

"UNDRIP has no international monitoring mechanism. As it now stands, there is no international body who is going to oversee these Principles and compliance!"

This whole clause is empty because the **UNDRIP** has no international monitoring mechanism. As it now stands, there is no international body who is going to oversee these Principles and compliance!

Moreover, Canada's view of these modern section 35 agreement negotiations is that the Indigenous Peoples need to give up their rights by consenting to federal pre-conditions to be federally recognized. Alternatively, Canada uses its section 91(24) authority to pass federal laws unilaterally imposing national standards over Indigenous Peoples.

This is not recognition of the right of self-determination or adherence to international human rights law, so this is a basic lie!

For the historic Treaty Nations the Treaty sets out the relationship and responsibilities – the federal government wants to change the nature of the historic treaties without saying so – this is unacceptable to historic Treaty Peoples.

Re: Principle 2. The Government of Canada recognizes that reconciliation is a fundamental purpose of section 35 of the *Constitution Act, 1982*.

As Indigenous Nations' Title was given by the Creator, Indigenous Peoples have pre-existing sovereignty and the right of self-determination. We do not accept that Canada can make "*federal recognition*" of Indigenous self-determination conditional! Moreover, Canada's assertion of sovereignty to Indigenous Peoples lands and resources is based on the illegal, racist doctrine of discovery – there can be no reconciliation if there is no basic acknowledgment of this basic fact! It is Ottawa doubletalk. These are Indigenous Peoples' lands and resources – there is no legitimate Crown title!

The UNDRIP and the TRC Report are not legal instruments, what is a "*constitutional value*"?

The fact is, Canada is a successor state and has a legal obligation to implement the historic treaties entered into between Indigenous Nations and Great Britain, this is not merely a "*constitutional value*"!

These "*10 Principles*" are reminiscent of the **1969 WHITE PAPER** issued by Pierre Elliot Trudeau and his Minister Jean Chretien – which was rejected by our

'Critique 10 Principles' continued from page 8

ancestors – accepting thse "*10 Principles*" means accepting that the provinces have jurisdiction in relation to the pre-existing Title, Rights and historic Treaties entered into between Indigenous Nations and Great Britain. This is an international issue!

Re: Principle 3. The Government of Canada recognizes that the honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.

The unilateral issuance of these "*10 Principles*" proves that the phrase "*honour of the Crown*" is a legal fiction outside of a courtroom.

Re: Principle 4. The Government of Canada recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.

This Principle confirms that Canada is trying to domesticate Indigenous Peoples and international law, both in violation of international legal standards. Canada has been questioned by the UN Human Rights Committee about how they implement the **International Covenant on Civil and Political Rights** (**ICCPR**) **Article 1** on the right to self-determination in regard to Indigenous Peoples and in their response Canada indicated that it was their position that Indigenous Peoples exercise their right to self-determination as Canadians and as part of Canadian society, not recognizing that Indigenous peoples have their own standing at international law.

Canada is not only trying to domesticate Indigenous Peoples, but also international law. Canadian federal Minister of Indian Affairs and Northern Development, Carolyn Bennett, at the UN Permanent Forum on Indigenous Issues on May 10, 2016, pretended to "*announce on behalf of Canada that we are now a full supporter of the Declaration without qualification*." Minister Bennett immediately contradicted this in the next sentence by adding a qualification: "*We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution*." This clearly is a qualification, which goes back to the **Constitution Act 1867**. It further tries to qualify and subjugate international law to lesser national standards. This is in violation of international law: national laws and policies should only be passed if they conform with international law and not vice versa.

It is equally dangerous if a country tries to domesticate Indigenous Peoples, making their rights subsidiary to Canadian law and policy; as trying to pretend that a single country can lower or unilaterally undermine the essence of international obligations, international legal principles and international customary law.

Re: Principle 5. The Government of Canada recognizes that treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.

Historic Treaties were not meant to be an instrument of reconciliation – treaties were necessary for the Crown's subjects to enter Indigenous Peoples' territories – that is not reconciliation – Canada does not legitimately possess the lands and resources Indigenous Peoples' own. The words "*agreements and other constructive arrangements*" were added to the **UN Study on Treaties** as a way to sidetrack the *Special Rapporteur on Treaties – Miguel Alfonso-Martinez* away from the

"It is equally dangerous if a country tries to domesticate Indigenous Peoples, making their rights subsidiary to Canadian law and policy; as trying to pretend that a single country can lower or unilaterally undermine the essence of international obligations, international legal principles and international customary law"

'Critique 10 Principles' continued from page 9

Planned Site "C" Dam in B.C. Treaty 8 Territory.

Treaties – he asked Canada to provide him with the international definition for agreements and other constructive arrangements – they never provided him with any definition. The use in this federal "*10 Principles*" position is designed to provide a smokescreen.

Ongoing cooperation – means that Indigenous Peoples are supposed to stand out of the way as the land and resources are taken from their lands without their consent – that is Canada's view of cooperation and partnership.

After 1973 – the "*land claim agreements*" are all based on the federal **Comprehensive Land Claims Policy** – this is not treaty-making like the historic Treaties were. That's why "*land claims agreements*" were only added to section 35(3) of the **Constitution Act 1982**, in the 1983 constitutional amendment and weren't included in section 35(1) of the original **Constitution Act 1982**.

"Article 19 states "in order to" not "aims to" obtain free, prior, informed consent. These "10 Principles" are another example of bad faith on the part of the Trudeau government to mislead Indigenous Peoples and the Canadian public about such an important matter. This is NOT reconciliation!"

One of the underlying assumptions in the "*10 Principles*" is that the historic treaties do not form an instrument for federal recognition and implementation of rights.

Re: Principle 6. The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.

This Principle states that the federal government "*aims to*" secure free, prior informed consent, this is a deliberate re-write—a watering down—of the UNDRIP articles, particularly article 19, which states:

> *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions* ***in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*** [emphasis added]

Article 19 states "*in order to*" not "*aims to*" obtain free, prior, informed consent. These "*10 Principles*" are another example of bad faith on the part of the Trudeau government to mislead Indigenous Peoples and the Canadian public about such an important matter. This is NOT reconciliation!

What is the new nation to nation relationship? Canada is not a nation – it is a state and as for going "*beyond the legal duty to consult*", if Canada is really and truly going to implement UNDRIP the "*duty to consult*" needs to be replaced with obtaining the free, prior informed consent of Indigenous Peoples' when development affects their lands, waters, territories and resources.

The federal government is also manipulating the standard in article 18 of UNDRIP, which states:

> *Article 18*
>
> *Indigenous peoples have the right to participate in decision-making in matters which would affect their rights,* ***through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*** [emphasis added]

‘Critique 10 Principles’ continued from page 10

Through the **AFN-Canada MOU’s on Joint Priorities and Fiscal Relations** the federal government is using the **Assembly of First Nations** (and other National Indigenous Organizations) and “*regional First Nation organizations*” as “*indigenous decision-making institutions*” knowing full well that most Indigenous (First Nation) Peoples are forced to choose their Chiefs and Councils through the racist, colonial **Indian Act**, which is not based upon Indigenous (First Nations) Peoples’ procedures or Indigenous decision-making institutions. The June 12, 2017, **AFN-Canada Memorandum of Understanding on Joint Priorities** is an attempt by the federal government to by-pass the Indigenous rights holders and the right to self-determination provided for in article 3 of **UNDRIP** and the related international human rights instruments.

The Supreme Court of Canada, indeed the judicial branch of the federal government, is in a conflict of interest when deciding cases involving Aboriginal title versus the assertion of Crown title, which is based on the racist, illegal doctrine of discovery. The SCC showed its racist, colonial bias when it held in the 2014 **Tsilhqot’in** decision that the radical or underlying title to land in Canada belongs to the Crown. In fact, the Supreme Court of Canada has never denied that the Crown asserted sovereignty over our territories – the Court has said that Indigenous rights were crystalized at the time of contact – this cannot be reconciled without fundamental constitutional change!

“It is clear from the “10 Principles” that the settler colonial state of Canada wants to maintain the status quo, it is not interested in fundamental reform”

Unless and until Canada enters into a constitutional process to negotiate an agreement with duly selected Indigenous Peoples on the meaning of section 35 Aboriginal and Treaty rights, particularly vis-a-vis the **Constitution Act 1867**, then this statement is meaningless.

Re: Principle 7. The Government of Canada recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown’s fiduciary obligations. Principle 8. The Government of Canada recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.

It is clear from the “*10 Principles*” that the settler colonial state of Canada wants to maintain the status quo, it is not interested in fundamental reform. One only has to look to “*Principles 7 and 8*”, in “*Principle 7*” the state seeks to maintain an approach that can justify the infringement of Indigenous rights, this is unacceptable. Under it the state remains in the dominant position and Indigenous Peoples are not full decision-makers regarding their territories and Peoples. It also does not recognize underlying Indigenous title to these lands and territories. Maintaining the status quo would mean to maintain the system of 0.2% of the land base claimed by Canada constituting Indian reserves, which are under federal jurisdiction, while the remainder is mainly under provincial jurisdiction, but it is really the settler colonial governments, settlers and corporations that benefit of the 99.8% of the land. This is what Canada is talking about in “*Principle 8*” refers to a renewed fiscal relationship, where dependency of Indigenous Peoples is maintained and the most that is envisioned are micro-economic ventures rather than

Canadian Army Unit during a training exercise.

L to R: INAC Minister Carolyn Bennett, PM Justin Trudeau, Justice Minister Jody Wilson-Raybould

"Canada wants all the Indigenous (First Nation) Peoples to give up their pre-existing sovereignty and right of self-determination and convert to the federal version of self-government (and self-determination), which is a municipal form of government within the Canadian Federation, in violation of internationally accepted rights of Indigenous Peoples'"

INAC Minister Carolyn Bennett at Standing Committee on Aboriginal Affairs.

'Critique 10 Principles' continued from page 11

recognition of the macro-economic dimension of Indigenous rights and the entitlement to full remuneration based on recognition of underlying Indigenous Title.

As noted above, the "*infringement*" test is a legal standard first imposed by the Supreme Court of Canada in its 1990 **Sparrow** decision. It is inconsistent with the minimum standards set out in **UNDRIP** (and related human rights instruments) or the right of self-determination, free, prior, informed consent and the right to the lands, territories and resources which Indigenous Peoples have traditionally owned, occupied or otherwise used or acquired. As justification of taking the lands and resources of Indigenous Peoples' the federal government uses the concept of public good – which is its settler colonial version of the collective right – settler rights override Indigenous Peoples' rights!

There is a threshold that Canada sets and then makes the rules to infringe Indigenous Peoples rights – that means that there is no real recognition that Indigenous Peoples' rights are important as against the Crown's assertion of rights.

Again, the federal government's control of "*federal recognition*" of Indigenous rights means that the July 12, 2016 **AFN-Canada Memorandum of Understanding on Fiscal Relations** and the June 12, 2017 **AFN-Canada Memorandum of Understanding on Joint Priorities** is an attempt to bypass the real rights holding Indigenous (First Nation) Peoples in decision-making and their right of self-determination by denying Indigenous Peoples' procedures and Indigenous Peoples' institutions NOT the racist colonial **Indian Act**. The federal government cannot legitimately say it is developing a "*renewed fiscal relationship*" "*in collaboration with Indigenous nations*". This is NOT reconciliation!

Under its unilateral section 35 policy negotiation framework the federal government controls "*federal recognition*" of the Indigenous Peoples' right of self-government and what the federal "*land claims*" policies allow. These federal policies and legislation are written to coerce Indigenous (First Nation) Peoples under federal and provincial jurisdiction and provincial land tenure systems (fee simple). This is not "*fair*" or legal access to the lands, territories and resources illegally taken from Indigenous Peoples through the **Constitution Act 1867**.

These are all elements of the current federal so-called "*Inherent Right*" self-government policy. Canada wants all the Indigenous (First Nation) Peoples to give up their pre-existing sovereignty and right of self-determination and convert to the federal version of self-government (and self-determination), which is a municipal form of government within the Canadian Federation, in violation of internationally accepted rights of Indigenous Peoples'.

Re: Principle 9. The Government of Canada recognizes that reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.

This principle and statement is meaningless.

Canada is trying to domesticate Indigenous Peoples and international law, both in violation of international legal standards.

There can be no real reconciliation between Canada and Indigenous (First Nation) Peoples because the federal government controls "*recognition*",

'Critique 10 Principles' conclusion from page 12

"*negotiation*" and "*implementation*", this is evident in the federal self-government, land claims policies and federal legislation. This is further evident by the federal use and control of the **Assembly of First Nations** and the "*regional First Nations organizations*" as consultative bodies for changes to federal policy and law, bypassing legitimate Indigenous Peoples procedures and decision-making institutions. Federal "*recognition*" is through **Indian Act** "*band councils*" and "*Chiefs*".

Fundamental change is required through constitutional reform.
Re: Principle 10. The Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.

This is another meaningless principle – a "*distinctions-based approach*" means nothing when you read the entire "*10 Principles*" and federal comments.

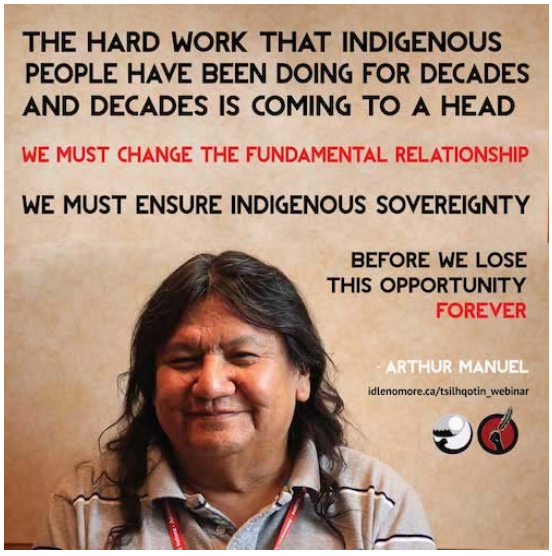
It is equally dangerous if a country tries to domesticate Indigenous Peoples, making their rights subsidiary to Canadian law and policy; as trying to pretend that a single country can lower or unilaterally undermine the essence of international obligations, international legal principles and international customary law.

Moreover, the federal government is still ignoring the right of Indigenous (First Nation) Peoples "*in accordance with the traditions and customs of the community or nation concerned*" to recognize and register their own Peoples. The federal government is instead using section 91(24) of the **Constitution Act 1867** and the **Indian Act** to manipulate "*federal recognition*" of Indigenous (First Nation) Peoples causing forced assimilation, conversion or integration into the general Canadian population as "*ethnic, religious or linguistic minorities*" NOT as Indigenous Peoples'.

Fathers of Canadian Colonization-1867

"The federal government is instead using section 91(24) of the Constitution Act 1867 and the Indian Act to manipulate "federal recognition" of Indigenous (First Nation) Peoples causing forced assimilation, conversion or integration into the general Canadian population as "ethnic, religious or linguistic minorities" NOT as Indigenous Peoples'"

COLONIALISM 150



Trudeau Didn't Consult Indigenous Leaders on Solutions

Natan Obed, president of Inuit Tapiriit Kanatami, speaks at the Institute on Governance Nation-to-Nation summit in Ottawa on Nov. 27, 2017 as Assembly of First Nations national chief Perry Bellegarde looks on. (Photo courtesy of Alex Tétreault)

By Carl Meyer, November 27, 2017, National Observer

The Trudeau government is being urged to improve relations with Canada's Indigenous peoples after it failed to involve senior leaders in drafting a proposal to do just that.

"The heads of both Canada's national Inuit and First Nations organizations said they weren't involved in the development of 10 principles released this summer by Justice Minister Jody Wilson-Raybould"

The heads of both Canada's national Inuit and First Nations organizations said they weren't involved in the development of 10 principles released this summer by Justice Minister Jody Wilson-Raybould, that would guide the government's Indigenous law and policy review.

The government's justice minister, and its minister in charge of Indigenous relations, both told National Observer that the principles were meant to be government-focused, and consultations will occur later on.

The principles are supposed to steer the government's approach to Indigenous issues such as consent and self-determination, and are based on the Canadian constitution and the UN Declaration on the Rights of Indigenous Peoples, which the government said it will back through an NDP private member's bill.

Implementing the UN Declaration is among dozens of commitments that Prime Minister Justin Trudeau's Liberals promised to implement in response to a 2015 report released by the Truth and Reconciliation Commission of Canada, which investigated decades of abuse of Indigenous people in residential schools that were set up to assimilate them.

Trudeau has made reconciliation a top priority by seeking to improve the federal government's relationship with Indigenous people.

Natan Obed, the president of Inuit Tapiriit Kanatami (ITK), the organization that represents Inuit in Canada, said the 10 new principles were a "good starting point" but he said that the current wording wasn't realistic. More specifically, he pointed to "challenges" with two of the 10 principles. He said that his organization is working with the government on this, right now.

"We're hoping to do it through having an addendum to the 10 principles that's more specifically focused on the Inuit reality, and can be more practical for the public service," he said in an interview in Ottawa, on the sidelines of a summit on the relationship between Indigenous peoples and government.

‘No Consultations’ continued from page 14

In a speech to the summit, hosted by the Institute on Governance, Obed explained what was wrong with the government's proposal.

The sixth principle, which states that the government recognizes that Indigenous engagement “aims to secure” Indigenous free, prior, and informed consent in making decisions affecting its territory and resources, is not consistent with the UN Indigenous declaration, he argued.

Why stop at “aims” to secure, he wondered — “why not work with us to ensure we get this right?”

Obed also questioned why the seventh principle — which states that “any infringement” of Indigenous constitutional rights “must by law meet a high threshold of justification” — was worded in the negative, rather than simply “celebrating” those constitutional rights.

He compared it to one partner in a relationship promising the other that they would only hurt them in rare circumstances.

Trudeau ministers say consultations will happen later

Assembly of First Nations national chief Perry Bellegarde also said AFN wasn't part of the development of the 10 principles. “We weren’t involved in developing a draft of that,” he told National Observer.

He said Obed “picked up some really good points in terms of the words within those principles,” and those will have to be built upon going forward.

He framed the principles as a government initiative that reflected recent Supreme Court decisions. “They’re the government’s principles. We’re doing our due diligence, assessment and analysis,” he said.

Crown-Indigenous Relations and Northern Affairs Minister Carolyn Bennett, who was present at the summit, said she saw the principles as focused on federal officials.

"These were government principles, the way the government will work," she said on the summit's sidelines. "And then as we come towards rights recognition, then they will be very much consulted on the next step."

Asked whether the government was currently working on the issue, she said "absolutely."

Reached for comment, Wilson-Raybould’s spokeswoman Kathleen Davis said the minister saw the 10 principles as "a new starting point for engagement with Indigenous peoples."

"Through the 10 principles, the government is providing new initial direction to its officials about how to engage and work with Indigenous peoples based on the recognition of Indigenous peoples, governments, laws, and rights," said Davis.

The principles are part of a transformation in relations between the federal government and Indigenous peoples, she said. "This work is ongoing and will advance through collaboration with Indigenous peoples in the upcoming months."

As for Obed's call for an "addendum" to the principles that focuses on Inuit, Davis said the minister acknowledged the principles are "evergreen" and just one step in a shift in relationships.

Ministers have been meeting with Indigenous leaders, organizations and experts

Federal Minister of Justice, Jody Wilson-Raybould unilaterally issued “10 Principles”.

“Assembly of First Nations national chief Perry Bellegarde also said AFN wasn't part of the development of the 10 principles. “We weren’t involved in developing a draft of that,” he told National Observer”

AFN NC Bellegarde outside First Ministers’ Meeting on Climate

'No Consultations' continued from page 15

Romeo Saganash, MP, NDP, introduced a private member's Bill C-262 to implmenet UNDRIP.

as part of a "working group," said Davis, and the minister wrote all Indigenous governments across the country in September to ask about priorities going forward. "Responses are still forthcoming," she said.

"We expect the engagement on legislative and policy shifts to advance the recognition of rights will intensify in the near future."

ITK says principles don't conform to UN declaration

In the interview, Obed said he hoped there will be more participation by Inuit in the government's ongoing law and policy review — something the government itself has promised in its mandate letters to ministers.

"We need more participation, we need more specific content within the Indigenous law and policy review," he said.

Wilson-Raybould's spokeswoman Davis emphasized that the government supported Bill C-262, which would require full implementation of the UN Indigenous rights declaration.

"The sixth principle speaks to the standard of consent in domestic and international law. As the government announced last week, it supports Bill C-262 regarding consistency between the laws of Canada and the minimum standards in UNDRIP," said Davis.

She reiterated that the principles were one step in transforming government conduct, and based on the constitution and the UN declaration. As for the seventh principle, she said it was "based on the 35 years of jurisprudence from the Supreme Court of Canada."

"Wilson-Raybould's spokeswoman Davis emphasized that the government supported Bill C-262, which would require full implementation of the UN Indigenous rights declaration"

Changing the public service

Obed emphasized in his speech that a main problem with Indigenous reconciliation and the relationships between Indigenous groups and the Crown or government is how the public service and Canadian politics are expected to operate.

A good politician, said Obed, is expected to excel at "controlling the message" and occupying a space to push partisan talking points, while a good public servant is expected to defend the Crown's interests and limit Indigenous access to ministers.

Historically inside the department of Aboriginal Affairs and Northern Development, "to be a good public servant, the public service has to fight against us," he said.

He said it was difficult for Indigenous cultures to understand how a public administration can change its policies from one government to another and develop "amnesia" about its past work. It's "immensely frustrating," he said.

But the perception that the interests of the Crown is in conflict with the interests of indigenous peoples is wrong, he said. "That is not the case. we want to build this country with you."

Later, in response to a question from an audience member who identified as an Indigenous public servant, Obed added "my comments weren't meant to belittle all public servants" but just to raise the topic as an issue.

"Just think of being more human and wanting to fight for this moment of reconciliation and change," he said, "rather than this letter of the law mentality."

'No Consultations' continued from page 16

He said he's looking for Inuit to be recognized as a fully developed "policy space," a sort of geopolitical identity similar to how Canadians talk about regional policy spaces like Atlantic Canada.

"What we're asking for is for there to be an awakening," he said, for the government to understand what money and policies are actually trying to accomplish.

Bellegarde urges people to write their MPs

In his speech, Bellegarde positioned Trudeau government initiatives with Indigenous relations against the former Conservative government of Stephen Harper.

"Nothing was happening with First Nations people with the former [Conservative] government," he said.

"We see more light with this Liberal government" of Prime Minister Justin Trudeau, he added, but said the window was closing fast for meaningful progress before the next federal election.

Bellegarde related the story of his decision in 2015 to begin voting in federal elections. It was a reversal for Bellegarde, who had never voted in a federal election before.

He said he changed his mind after speaking with First Nations elders, chiefs, citizens and youth. Now, he said, members of Parliament know they better listen to Indigenous concerns, or they may not get re-elected.

"Write to your member of Parliament," he said he urges Indigenous peoples. "It's going to help close the gap...the next 150 years, you bet, are going to be better than the last 150 years."

Métis Nation looks to 2018 budget

Asked his take on the 10 principles, Métis Nation president Clément Chartier said he had no issue with them as they were laid out.

"I have no concern with those principles at all. I quite embrace those as guiding principles for the engagement" of Indigenous and government, he said.

Chartier said the government's approach to Métis will be revealed when the government rolls out its 2018 budget, which he is hoping will contain a number of Métis Nation requests on housing, child care, health, and economic development.

"We do expect that there will be sensitivity in this budget to the Métis Nation specifically," he said. "We're looking at a number of areas where we feel there's an opportunity."

He said that included "financial commitments" but that they were "still negotiating" on the details.

"If there's nothing in 2018 for the Métis Nation then basically we'll be of the understanding that there likely never will be."

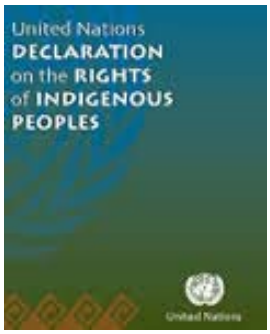
Obed says Trudeau genuine in N.L. apology

Obed raised Trudeau's formal apology to Newfoundland and Labrador residential school survivors in Happy Valley-Goose Bay, N.L. over the weekend. The schools were home to beatings, sexual abuse and neglect, in addition to loss of language and culture.

"I felt that the prime minister was genuine. I felt that he does see the path forward" and his feelings of regret on behalf of the government are true, said Obed. "We all have this legacy and it doesn't make us bad people."

Obed talked about his difficult upbringing -- what he has described previously as abuse at the hands of his father, which he has blamed on his grandparents being relocated and his father being sent to an orphanage away from his family and culture.

It was a "pretty emotional week," he said. **[Reprinted courtesy of National Observer.]**



Implementing UNDRIP is a Big Deal for Canada. Here's What You Need to Know

Canada-AFN MOU signing June 12, 2017

By James Wilt, DesmogCanada, Tuesday, December 12, 2017

First opposed, then endorsed. It's now pledged, but called "unworkable."

In Canada the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is not ratified, nor from a legal perspective even really understood.

"In Canada the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is not ratified, nor from a legal perspective even really understood"

The history of Canada's relationship with Indigenous rights has been a sordid one. But all that was supposed to change with the nation's latecomer adoption of the declaration. After years of federal Conservative inaction on the file, Justin Trudeau took to the campaign trail with a promise to restore Canada's relationship with Indigenous peoples.

The doctrine of 'free, prior and informed consent' is a touchstone element of the declaration and one that will have a potentially massive impact on how megaprojects — like pipelines, the Alberta oilsands, and Site C dam — are proposed and approved in traditional Indigenous territory.

Yet onlookers say the declaration's implementation is now hung on an NDP private member's bill in the House of Commons and while there is broad support for its implementation, the actual meaning of UNDRIP for Canada is unclear and, as a technically non-binding document, may mean less than many think it should.

Interpretation of UNDRIP Strongly Contested

This past week the private member's bill C-262 — first tabled by NDP MP Romeo Saganash back in April 2016 — was debated following its second reading in the House of Commons.

The bill requires the federal government to "take all measures necessary to ensure that the laws of Canada are consistent" with UNDRIP and develop a national action plan to do so in "consultation and cooperation" with Indigenous peoples.

The concise bill received full support from the federal Liberals only two weeks prior to the second reading. That catapulted it very much into the realm of possibility.

Yet the actual interpretation of UNDRIP is strongly contested.

The declaration itself is a document that lays out the basic rights Indigenous peoples that should be afforded around the world. It outlines specific obligations on the part of nations in how they relate to Indigenous peoples and their land, and contains some clauses that fly in the face of Canada's historic treatment of First Nations, Métis, and Inuit.

The federal Liberals have seemingly contradicted themselves on multiple occa-

'UNDRIP Implementation' continued from page 18

sions about what UNDRIP means while some Indigenous scholars have an altogether different take on what the declaration truly means for Indigenous sovereignty and nationhood.

"When they say they're going to support Bill C-262, I just view it as a PR stunt," said Russ Diabo, a Kahnawake Mohawk policy advisor, in an interview with DeSmog Canada.

The federal government isn't prepared to fully face the implications of UNDRIP, Diabo said, and how it could challenge Canada's current legal frameworks.

UNDRIP: Opposed, Endorsed, Pledged, Unworkable, Supported

When UNDRIP was first adopted by the UN General Assembly in 2007, there were only four opposing votes to the 46-article declaration: the United States, Australia, New Zealand and — you guessed it — Canada.

In 2010, the Conservative government under Harper endorsed UNDRIP, describing it as an "aspirational document," but remained a permanent objector of the declaration. Despite the endorsement, the principles of UNDRIP were never applied in Canada in any tangible way.

The Liberal Party pledged to change that. In its 2015 election platform, the party clearly stated that it would "enact the recommendations of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples."

In May 2016, Minister Carolyn Bennett officially announced Canada's removal of its permanent objector status to UNDRIP, committing to "fully adopting this and working to implement it within the laws of Canada, which is our charter."

But only two months later, Minister of Justice Jody Wilson-Raybould described the adoption of UNDRIP as "unworkable" and "a political distraction."

Near the end of 2016, when questioned about the recently approved Kinder Morgan Trans Mountain pipeline, Prime Minister Trudeau stated that Indigenous opponents "don't have a veto," directly contradiction previous promises that under his government 'no would mean no' for Indigenous peoples when it came to resource extraction and energy infrastructure projects.

Other have suggested Trudeau's position also contradicts the key provision in UNDRIP of the need for governments to obtain "free, prior and informed consent" from Indigenous peoples prior to development.

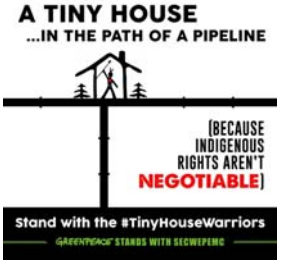
UNDRIP Technically Non-Binding, Up to Canada To Define

In the recent House of Commons debate about Bill C-262, MP Romeo Saganash thanked the federal Liberals for "finally accepting that this should be a framework for reconciliation in this country."

But there are still great disagreements about what legal ramifications of implementing such a "framework" will be. In international law, declarations, such as UNDRIP, are non-binding.

Robert James, principal lawyer at JFK Law in British Columbia and expert on Abo-

"when questioned about the recently approved Kinder Morgan Trans Mountain pipeline, Prime Minister Trudeau stated that Indigenous opponents "don't have a veto," directly contradiction previous promises that under his government 'no would mean no' for Indigenous peoples when it came to resource extraction and energy infrastructure projects"



Supreme Court of Canada Building, Ottawa.

'UNDRIP Implementation' continued from page 19

riginal law, said the eventual implementation of UNDRIP in Canadian law could impact how federal statutes are interpreted and applied, and how some elements of common law, such as duty to consult, are applied.

"One of the side effects of this is it may take what's primarily a political document used to advance moral and political positions and really put it in the hands of the Western court to say, 'well actually, here's what UNDRIP really says,'" James told DeSmog Canada in an interview.

"A lot of people out there on both sides may not actually like what a court says UNDRIP means when push comes to shove."

Tension over Indigenous Sovereignty

As to be expected, a main tension is about Indigenous sovereignty and self-determination.

James points out that Article 46 — the very last of the declaration — states that nothing in UNDRIP may be interpreted as authorizing or encouraging "any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."

"A lot of people out there on both sides may not actually like what a court says UNDRIP means when push comes to shove"

Canada is one of those "sovereign and independent states."

Critical components of the declaration could be interpreted as having the ability to "dismember or impair" Canada as a nation, meaning Article 46 could have significant consequence for how fully UNDRIP is implemented and embraced.

Disputes over access to land, natural resources and water, for example, lie at the heart of many recent clashes between Indigenous peoples and Ottawa. And as the Mi'kmaq blockade in New Brunswick demonstrated, Indigenous peoples are often criminalized for exercising sovereignty over traditional lands.

Patricia Doyle-Bedwell, a Mi'kmaq lawyer and professor at Dalhousie University said the power of UNDRIP lies in its ability to strengthen Indigenous rights to protect land and water.

"That's what that is about. We're not going to have anything if we don't have our land," she told DeSmog Canada.

"We have the right to our survival, our dignity, our way of being as Indigenous people."

How Does UNDRIP Fit In With Constitutionally Protected Aboriginal Rights?

In 1982 Canada amended its constitution to — for the first time — enshrine the rights of Canada's indigenous peoples.

The amendment, Section 35, states simply: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

The creation of Section 35 represented a turning point in Canada's history and a monumental victory Canada's Indigenous peoples fought very hard for. Yet the wording of the section has been criticized for its vagueness which doesn't define what those rights are.

'UNDRIP Implementation' conclusion from page 20

So in May 2016, when Minister Bennett told the UN, "By adopting and implementing the declaration, we are excited that we are breathing life into Section 35 and recognizing it as a full box of rights for Indigenous Peoples in Canada," concerns emerged that Canada might restrict UNDRIP under the confines of the constitution.

"Bennett is trying to contain international laws and principles and standards into Canadian domestic constitutional law and court cases," Diabo, the Kahnawake Mohawk policy advisor, told DeSmog Canada. "That's the problem that I have."

Diabo said the original negotiations between Indigenous nations and Canada about the constitution weren't a success, leaving plenty of "unfinished business."

Former national chief of the Assembly of First Nations, Ovide Mercredi, recently called for the completion of those negotiations and the need for Canada to actually honour and fulfill its existing treaties with Indigenous peoples.

What Lies Ahead for UNDRIP?

Bill C-262 will be debated again in February 2018. A March will decide if the bill will move past second reading to committee. Given full support from the federal Liberals, it appears likely that will happen.

As that March vote approaches, the declaration will be put under increasing scrutiny. Past debate has been used to raise questions about the merits of the document and what uncertainties remain surrounding its legal implementation.

During the Dec. 5 debate in the House of Commons, Conservative MP and opposition critic for Indigenous and Northern Affairs, Cathy McLeod asked: "What is the difference between 'free, prior, and informed consent' and 'consult and accommodate,' which is what we have in law right now?"

She continued, "certainly there is no question that the declaration proposes that change in our law and we need to simply know what that is going to mean because it is important."

As of right now, there aren't any clear answers to that question.

For many Indigenous experts, the potential success of Bill C-262 and UNDRIP itself depends on the federal government's perspective on Indigenous sovereignty and self-determination.

"To implement UNDRIP…we have to go back to nation-to-nation relationships," Doyle-Bedwell said. "This idea that we have to fit it into these boxes will not advance our reconciliation."

[Reprinted courtesy of Desmog Canada.]

INAC Minister Carolyn Bennett at UNPFII in May 2016.

"Bennett is trying to contain international laws and principles and standards into Canadian domestic constitutional law and court cases," Diabo, the Kahnawake Mohawk policy advisor, told DeSmog Canada. "That's the problem that I have."

INAC Minister Bennett being protested at an Unsettling Canada 150 Day of Action.

Arthur Manuel's Books Should Be Mandatory Reading For All Canadians

"The loss of our lands has been the precise cause of our impoverishment. Indigenous Peoples control only 0.2 [per cent] of the land in Canada while settler governments claim control of the other 99.8 [per cent]. With this distribution of land, you don't have to have a doctorate in economics to understand who will be poor and who will be rich. And our poverty is crushing." - Arthur Manuel, Secwepemc Nation from his book Unsettling Canada.

By Doreen Nicoli, December 17, 2017

Arthur Manuel was like a brother to Kahnawake Mohawk policy analyst, writer, and activist Russ Diabo. Recently, I had the honour and pleasure to speak by phone with Diabo. He told me about the life and work of Manuel, his long-time friend, fellow activist, and author of Unsettling Canada (UC) and The Reconciliation Manifesto: Recovering the Land Rebuilding the Economy (RM).

According to Diabo, "Both books are important for understanding the real history of Indigenous peoples and today's treatment because the structure hasn't changed."

In UC, Manuel lays out Indigenous history as a pattern of dispossession followed by dependence which eventually gives way to uprisings that culminate in the oppression of First Nations, Inuit and Metis peoples.

Meanwhile, RM, focuses on Indigenous right to self-determination. But, Manuel doesn't shy away from addressing the fact that Indigenous Nations also need to put their own house in order.

According to Diabo, "First Nation assemblies have been co-opted by federal government money. They are not sitting at the table at the United Nations to ensure more international oversite. There is government oppression of the 0.2 [per cent] economy which is not addressing dependency on the federal government. This needs to be addressed through a change to the system which means going after Trudeau and his fake reconciliation."

Manuel's chapter on dishonest reconciliation embraces the creative use of language by settler politicians and a disrespecting of Indigenous self-determination as laid out by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In 2007 when UNDRIP was adopted by the UN, Canada was one of only four countries to vote against it. In 2010 after succumbing to constant international pressure Canada endorsed the declaration. Yet, it wasn't until 2016 that Canada adopted and implemented the declaration. Even then, it did so only in accordance with the Canadian Constitution effectively demoting international law to a position secondary to national law -- something that is just not done.

To date, the Canadian government has refused to implement the UNDRIP Action Plan. It continues working against Indigenous interests; routinely excludes Indigenous representatives from decision making processes; and violates Nation to Nation treaties and international human rights law.

Chapter 43 of RM is a scant five pages that concisely lays out Manuel's six-point plan for effective, relatively painless decolonization that could, "Transform Canada into one of the most politically and environmentally progressive countries in the world, one that could be an example for all on how the ugly part of colonialism and racism, that has been so cata-

"Manuel's chapter on dishonest reconciliation embraces the creative use of language by settler politicians and a disrespecting of Indigenous self-determination as laid out by the United Nations Declaration on the Rights of Indigenous Peoples "

‘Mandatory Reading’ conclusion from page 22

strophic for our people in terms of the sheer brutality we have been subject to, can finally be laid to rest. And both Indigenous peoples and Canadians can finally turn away from that sad past and look to a much brighter future."

On January 11, 2017, shortly after completing the manuscript for RM, Manuel died of congenitive heart failure at the age of 65.

Diabo remembers Manuel as, "The Nelson Mandela of the international Indigenous movement. No one has his knowledge, skill, and integrity. It will take many people to replace him and the limitless volunteer work he contributed."

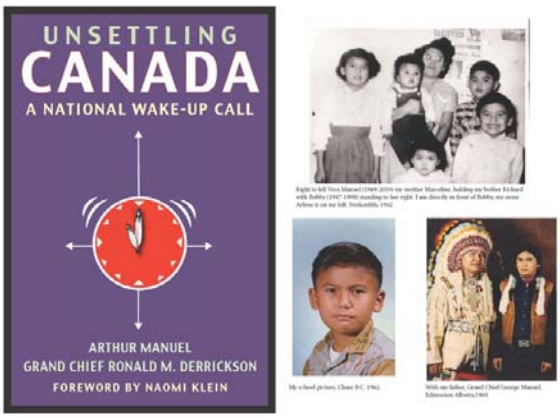
Manuel's wife, son and two daughters are continuing the legacy of his work and they're joined by Manuel's vast network of friends and supporters numbering in the thousands.

Throughout this year of Colonialism 150 I've encouraged readers to listen to, watch or read an Indigenous point of view each week. Well, here you go settlers, buy a copy of each of these essential books and spend some quality time over the holidays educating yourself about Canada's colonial past and present, but more importantly embrace Manuel's vision of a Turtle Island that is truly home to Indigenous and settler alike.

While you're at it, simplify your life by buying several copies to give to your kids, in-laws, friends, colleagues, and dinner guests this holiday season. What a wonderful way to ring in a truthful New Year ready to hold Canada's governments accountable for meaningful Nation to Nation reconciliAction!

Arthur Manuel at UN Meeting in Geneva, 2014.

“Diabo remembers Manuel as, "The Nelson Mandela of the international Indigenous movement. No one has his knowledge, skill, and integrity. It will take many people to replace him and the limitless volunteer work he contributed.”



BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

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The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it.

Feedback is welcome. Let us know what you think of the Bulletin—Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

For More Information Check Out: http://unsettling150.ca/

About Recognition of Indigenous Rights and Self-Determination [FEDERAL] Discussion Tables

The Government of Canada is working with Indigenous communities at over 50 discussion tables across the country to explore new ways of working together to advance the recognition of Indigenous rights and self-determination. These discussions represent more than 300 Indigenous communities, with a total population of more than 500,000 people.

The goal is to bring greater flexibility to negotiations based on the recognition of rights, respect, cooperation and partnership. At these tables, Canada and Indigenous groups can explore new ideas and ways to reach agreements that will recognize the rights of Indigenous groups and advance their vision of self-determination for the benefit of their communities and all Canadians.

These discussions are community-driven and respond to the unique rights, needs and interests of First Nations, Inuit, and Métis groups where existing federal policies have not been able to do so. This may involve:

- jointly developing new ways to recognize rights and title in agreements
- building agreements in steps
- exploring ways to advance treaty rights and interests
- finding common ground to settle litigation outside of the courts
- using existing tools that are available government-wide outside of treaty and self-government processes to help address the unique needs of each group
- building awareness of the treaty relationship

INAC

The priorities identified by Indigenous groups are the starting point for these discussions. Discussions can focus on one priority area or cover many issues.

The process for moving forward is jointly designed by the parties through co-developed agreements (such as Letters of Understanding, Memoranda of Understanding and Framework Agreements).

Under the agreed-upon process, the parties then work to find the common ground for moving ahead in partnership toward a shared and balanced solution.

Canada recognizes that federal policies and approaches will continue to evolve over time and looks forward to working with Indigenous communities to co-develop agreements that work for and benefit the parties. **SOURCE: INAC**