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FIRST NATIONS STRATEGIC POLICY COUNSEL

Indigenous People's Should Reject Canada's UNDRIP Bill C-15: *It's Not All That Meets The Eye*

L to R: Natan Obed, President of Inuit, Tapiriit Kanatami (ITK), David Lametti, Federal Minister of Justice & Attorney-General, Perry Bellegarde, National Chief, Assembly of First Nations (AFN), at Press Conference announcing UNDRIP Bill C-15, in Ottawa on Dec. 3, 2020. (photo courtesy of Adrian Wyld/The Press Canadian)

By Russ Diabo

Trudeau's **C-15 bill** is an attack on Indigenous sovereignty and self-determination

On December 3, the Trudeau government — in its trademark style of symbolism over substance on Indigenous policy, and after only six weeks of selective behind the scenes "*engagement*" with National Indigenous organizations, the provinces and industry — introduced **Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act**, into Parliament.

Left out of this process, as they always are, were Indigenous rights holders — the actual Indigenous peoples from across the country. They were not consulted or even shown a draft before the bill was tabled and now the Trudeau government is planning to rush **Bill C-15** through the House of Commons at breakneck speed when it resumes in January 2021.

There is a good reason for the government's haste. They do not want to give Indigenous people — apart from the small crew of federally funded Indigenous leaders — time to look at this profoundly flawed bill in detail. Because once you look past the flowery words of the preamble, Bill C-15 is not only full of empty promises, it actually delivers the opposite of what the government and its team of Indigenous salespersons are promising.

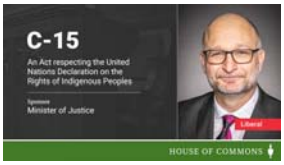
This is the conclusion of a group of experts from several Indigenous activists networks, including lawyers with constitutional and interna-

Special points of interest:

- **Federal UNDRIP Bill C -15 is Deeply Flawed & Dangerous & Recommended that First Nations Reject it!**
- **AFN Manipulated its Process to stop only Draft Resolution on Bill C-15 at Assembly**
- **No #LANDBACK if Bill C-15 becomes law**
- **Rolland Pangowish offers his insights on negotiations with the Crown**

Inside this issue:

'Reject Bill C-15' continued from page 1



tional experience, who analyzed **Bill C-15** and confirmed the following:

- The preamble of **Bill C-15** is meant to confuse and mislead Indigenous peoples and nations. The government waxes poetic about how the "*rights and principles affirmed in the declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada*." But this preamble is in fact not legally binding so courts will focus on the **main deeply flawed operative sections 1-7 of Bill C-15**.
- If passed, **Bill C-15** will be used by the government of Canada to reinforce the status quo of federal self-government and land claims policies, because the Bill makes it clear that existing national laws—many of which violate Indigenous rights—will prevail over **UNDRIP**.
- The main sections of **Bill C-15**, particularly section 2, maintain the common law interpretation of section 35(1) and section 35(2) of the *Constitution Act, 1982*, which is heavily based on the **colonial Doctrine of Discovery**, which strips Indigenous people of their land ownership and land rights.

"The main sections of Bill C-15, particularly section 2, maintain the common law interpretation of section 35(1) and section 35 (2) of the Constitution Act, 1982, which is heavily based on the colonial **Doctrine of Discovery**, which strips Indigenous people of their land ownership and land rights"

The primacy of the **Doctrine of Discovery** means Canadian courts will continue to adjudicate using existing case law based on section 35 of the *Constitution Act, 1982*, and these rulings have caused major harm to the daily life for Indigenous peoples and nations including:

- **The imposition of Crown sovereignty over Indigenous peoples, including self-government rights.**
- **Disregarding Indigenous laws and legal traditions.**
- **Establishing that the Crown has the "ultimate title" to land.**
- **The burden of proof imposed on Indigenous peoples and nations to establish their rights in Canadian courts.**
- **The ability for the Crown to infringe Aboriginal rights based on the "Sparrow test" that allows infringement of Aboriginal rights under all sorts of circumstances.**
- **The erosion of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles.**

If **Bill C-15** becomes law, all 46 articles of the UN Declaration will be interpreted and implemented through the colonial Canadian constitutional framework, instead of respecting international law regarding the rights of Indigenous peoples.

For example, the international Indigenous right of self-determination https://rights.culturalsurvival.org/undrip-article-03-self-determination (**UNDRIP-Article 3**) will be interpreted and implemented through the federal so-called '**inherent right' to self-government policy**, which is

'Reject Bill C-15' conclusion from page 2

not based on the international right of self-determination.

In fact, the **federal 'inherent right' policy** states:

> ***"The inherent right of self-government does not include a right of sovereignty in the international law sense…implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation [as fourth level "Indigenous governments."]***

UNDRIP will be used to justify the removal of Indigenous right to self-determination and with that, all of the other promised rights of the UN Declaration — regarding restoration of stolen lands, territories and resources, or restitution for stolen lands and the articles requiring free, prior informed consent for developments on lands of Indigenous people's would be meaningless.

In other words, by placing **UNDRIP** beneath existing Canadian law, they domesticate it out of existence.

In this sense, it follows the pattern set by the **British Columbia government Bill 41 UNDRIP law**. Using the same process, ignoring British Columbia's 203 **Indian Act** Bands and consulting only an Indigenous "*Leadership Council*", the British Columbia law has failed to protect Indigenous peoples and their rights.

L to R: AFN National Chef Perry Bellegarde, AFN BC Regional Chief Terry Teegee, BC Premier John Horgan. During an AFN Honouring Ceremony in Ottawa, Dec. 3, 2019.

We saw this in the case of the Wet'suwet'en Hereditary Chiefs who attempted to protect their pristine forests from a natural gas pipeline.

British Columbia's UNDRIP Bill was adopted in November 2019, but an injunction was issued against the Wet'suwet'en in January 2020, and despite just having passed the **UNDRIP law**, Premier Horgan — whose government has provided massive subsidies to the natural gas pipeline project — launched a large scale **Royal Canadian Mounted Police** (**RCMP**) operation to arrest and remove dozens of Wet'suwet'en from their lands along the pipeline route.

Like the **British Columbia UNDRIP law**, the federal bill will not only leave Indigenous peoples exposed to an armed assault on their own territory, but it will also negatively impact all aspects of their lives because the bill keeps in place the colonial system of the Crown's (federal, provincial, municipal) centuries-old domination through its laws, including the *Constitution Act of 1867* and the *Constitution Act of 1982*, which are based on the **colonial Doctrine of Discovery** while using **UNDRIP** to provide a cover for their oppression.

Based on our analysis we are strongly recommending Indigenous peoples and nations reject **Bill C-15** and take action to stop Parliament from passing it!

Because it's obvious AFN and many of our highly paid federally funded leaders singing in the Liberal Party chorus will not!

NOTE: This article has been reprinted from versions published by the Aboriginal Peoples' Television Network and the publication Indian Country Today.

PRESS RELASE
UNDRIP BILL C-15 DEEPLY FLAWED AND MUST BE REJECTED SAY INDIGENOUS NETWORKS AND LAND DEFENDERS

(December 11, 2020) The Federal **UN Declaration of the Rights of Indigenous Peoples Bill C-15** "*is a sleight of hand that promises to increase and expand Indigenous rights but actually accomplishes the opposite*," says Truth Before Reconciliation Campaign spokesperson Russell Diabo.

"*The government has done this*," he says, "*by flipping the requirement for making Canadian law's subject to the provisions of UNDRIP, to making UNDRIP subject to existing Canadian laws under Section 35 of the Constitution. Section 35 of the constitution has already been adjudicated in Canadian courts to give Canada control of Indigenous lands under the Doctrine of Discovery, and places severe limits on the right of self-determination.*"

By subjugating UNDRIP to Section 35, Diabo says, "*the government is taking away all of the rights the declaration was designed to recognize. Under Section 35, the Indian Act and other federal laws directed at First Nations and Indigenous Peoples, Indigenous Peoples are not recognized as part of self-determining nations, as UNDRIP is supposed to do, but only as what Prime Minister Trudeau has described as a "fourth level of government" behind the federal, provincial and municipal governments.*

Similar conclusions have been reached by the Association of Iroquois and Allied Indians (AIAI)."

"While we support the UN version of UNDRIP, Grand Chief Joel Abram says, "the AIAI assembly voted to oppose the UNDRIP Act because in it's current state it forgoes the original intent of the declaration and instead comes in the form of another White Paper sought by Trudeau's father. Now the Prime Minister is attempting his own version of the White Paper under the guise of a different interpretation of UNDRIP."

Professor Nicole Schabus, who teaches law at Thompson Rivers University, says that the central problem is that Bill C-15 tries to "*domesticate*" international law and "*international law is approved and developed at the international level, and these standards cannot be lowered at the national level.*" By subjugating UNDRIP to Canadian law and lowering standards, Bill C-15 denies Indigenous Peoples the right to self-determination that UNDRIP recognizes and "*the right to self-determination is the main remedy for colonization.*"

Diabo was also sharply critical of the way the Bill has been recently presented by the AFN leadership at their recent Assembly. "*By refusing to allow debate on the Bill at the AFN Assembly, the AFN is opening the door to a Trojan Horse that is designed to subjugate rather than liberate. Indigenous Peoples should not be dazzled by the flowery language in the Bill's preamble but must look at the actual content of the Bill to see the danger it poses.*" Diabo is now working with Indigenous Networks and Land Defenders from across the country to mount national and even international opposition to the Bill.

"By refusing to allow debate on the Bill at the AFN Assembly, the AFN is opening the door to a Trojan Horse that is designed to subjugate rather than liberate. Indigenous Peoples should not be dazzled by the flowery language in the Bill's preamble but must look at the actual content of the Bill to see the danger it poses"

'UNDRIP Bill Deeply Flawed' conclusion from page 4

-30-

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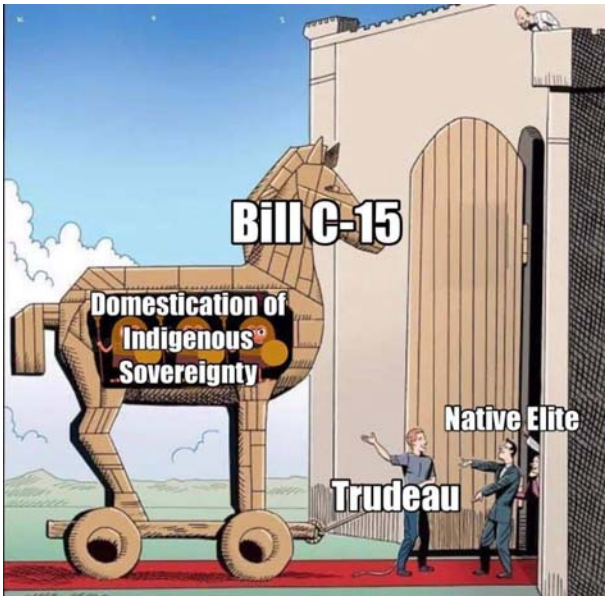
This document is issued by the Coordinating Group of the Idle No More, Defenders of the Land and Truth Campaign Networks.*

***Defenders of the Land** is a network of Indigenous communities and activists in land struggle across Canada, including Elders and youth, women and men, dedicated to building a fundamental movement for Indigenous rights, was founded at a historic meeting in Winnipeg from November 12-14, 2008. **Idle No More** was founded by four women (three of whom are Indigenous and one of whom is White) in November 2012 in response to several bills passed in Canada that undermine Indigenous rights and environmental protection. The movement grew quickly, and by January 2013 there were tens of thousands of Indigenous and non-Indigenous people taking part in locally-based actions and mass mobilizations around the world. The **Truth Campaign** is a core team of people who are part of an advocacy and public education campaign to get Crown governments and Canadian society to address "**Truth Before Reconciliation**" because the Truth and Reconciliation Commission and its Calls to Action are not sufficient to address the colonization that First Nations have historically experienced and which continues today particularly under the colonial policies and legislation passed under the *Constitution Act 1867* and the *Constitution Act 1982*.



"If this Bill becomes federal law, all aspects of the lives of Indigenous Peoples will be impacted negatively for generations to come because the colonial system remains in place. The **Doctrine of Discovery** underscores Canadian law including the *Constitution Act 1867* and the *Constitution Act 1982*"

House of Commons where Liberals have a minority government, but NDP will likely support Bill C-15.

SUMMARY OF ANALYSIS OF FEDERAL BILL C-15: *United Nations Declaration on the Rights of Indigenous Peoples Act* December 2020

Background

Firstly, there were three distinct drafts of the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP)[1].

Hundreds of Indigenous representatives had direct participation over years to develop the original Text version of UNDRIP. Politicized negotiations with nation-states lead to the The United Nations General Assembly adoption of draft three in 2007 by resolution. The third draft of UNDRIP in 2007.

Trudeau's government has been developing a Canadian definition of UNDRIP since 2015, with this qualified statement by Indigenous Affairs Minister Carolyn Bennett to a United Nations body in 2016 "*We intend nothing less than to* ***adopt and implement the declaration in accordance with the Canadian Constitution***." [emphasis added]

The Government of Canada committed, through the 2019 Minister of Justice mandate letter and the 2020 Speech from the Throne, to ensure the introduction of a government bill to support the "*implementation*" of the UN Declaration.

Calculated Process Leading up to Tabling of Bill C-15 into Parliament

Bill C-15: ***An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*** was introduced into Parliament on December 3, 2020, bypassing the rights holders (Indigenous Peoples and Nations). Rather the government focused on its funded organizations (AFN, MNC, ITK) to manufacture consent: a continued violation of our right to self -determination. This manufactured consent brings disrepute to the process, the administration of justice and the compromised people who have cooperated with the oppressor—the government of Canada.

Bill C-15 will negatively impact all aspects of the lives of Indigenous Peoples and Nations in Canada for generations to come, because the Bill will keep in place the colonial system of the Crown's (federal, provincial, municipal) centuries old domination through its laws, including the *Constitution Act 1867* and the *Constitution Act 1982*, which are based on the **colonial Doctrine of Discovery**.

If this Bill becomes federal law, all aspects of the lives of Indigenous Peoples will be impacted negatively for generations to come because the colonial system remains in place. The **Doctrine of Discovery** underscores Canadian law including the *Constitution Act 1867* and the *Constitution Act 1982*.

'Bill C-15 Summary' continued from page 6

Federal UNDRIP Bill C-15 Preamble:

The preamble of **Bill C-15** is not legally binding, it is meant to confuse and mislead Indigenous Peoples and Nations as to what really is, or is not, in sections 1-7 of **Bill C-15**. The courts will focus on the main sections (1-7) of **Bill C-15** not the preamble.

So, do not be fooled by supporters of **Bill C-15** who refer to the preamble, which is weakly worded to benefit the Crown anyway. For example:

the preamble states that the doctrine of discovery is *"legally invalid"*, but **Bill C-15** contains nothing to acknowledge or reverse the common law's reliance on the **doctrine of discovery** in its interpretation of s. 35 of the *Constitution Act, 1982*;

the preamble states the urgent need to respect and promote the inherent rights of Indigenous peoples, including their rights to their lands, territories and resources, but then contains no substantive provisions about this in **Bill C-15**;

the preamble weakly states that the "*declaration is affirmed as a source of the interpretation of Canadian law*", then the preamble goes on to use even weaker wording to the effect that the declaration has "*application in Canadian law*".

Summary of Federal UNDRIP Bill C-15 Sections 1-7:

Bill C-15's reference to section 35(1) of the *Constitution Act, 1982* contradicts the preamble and reaffirms Canadian law foundations are based on the colonial Doctrine of Discovery:

Canada is relying on the current legal framework applicable to section 35 of the *Constitution Act, 1982* to implement UNDRIP in Canadian law. This is a fatal flaw in **Bill C-15**, subsection 2(2) **Rights of Indigenous Peoples** of the Bill states that:

> *This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982 and not as abrogating or derogating from them*

The wording of **section 2(2)** of **Bill C-15** completely domesticates the UNDRIP commitments within the borders and confines of the Canadian common law. This is very similar to the accomplishment made of the 2017 effort to have the Trudeau government's "*10 Principles for Indigenous Relationships*" act as a proxy for the UNDRIP, with the federal "*10 Principles*" simply being a restatement of the Canadian common law limitations of section 35 rights. To be clear, First Nations should not support this legislative bill as it subjugates UNDRIP rights to the common law interpretation of section 35(1) of the *Constitution Act, 1982* which is heavily based on the **colonial Doctrine of Discovery**.

Cover of 2019 Liberal Platform

"To be clear, First Nations should not support this legislative bill as it subjugates UNDRIP rights to the common law interpretation of section 35 (1) of the Constitution Act, 1982 which is heavily based on the colonial **Doctrine of Discovery**"

PM Trudeau and his missing 21 seconds!

'Bill C-15 Summary' continued from page 7

In fact, the federal **'Inherent Right' Policy** states "*The inherent right of self-government* ***does not include a right of sovereignty in the international law sense****…implementation of self-government should enhance* ***the participation of Aboriginal peoples in the Canadian federation [as fourth level "Indigenous governments"]***". [emphasis added]

Section 35(1) of the *Constitution Act, 1982* must be interpreted in accordance with UNDRIP and not the other way around.

The promise of UNDRIP includes the repudiation of the **Doctrine of Discovery**. In fact, the repudiation of the **Doctrine of Discovery** is specifically cited in the text of UNDRIP, in addition to the Royal Commission on Aboriginal Peoples recommendations and the Truth and Reconciliation Commission's calls to action.

It is not possible to implement UNDRIP and respect the recommendations of the Royal Commission and Truth and Reconciliation Commission's calls to action by subjugating UNDRIP rights to the current legal framework associated with section 35 of the *Constitution Act, 1982*. It is dishonest for the preamble of **Bill C-15** to pretend it is rejecting the **colonial Doctrine of Discovery** and that there is harmony and consistency with **Bill C-15 subjugating UNDRIP rights to the current legal framework associated with section 35 of the *Constitution Act, 1982***, which reaffirms the supremacy of the **colonial Doctrine of Discovery**.

"Section 35(1) of the Constitution Act, 1982 must be interpreted in accordance with UNDRIP and not the other way around"

Indigenous Peoples in international human rights law are not "Aboriginal peoples of Canada"

Another fatal flaw of **Bill C-15** is the wording of subsection 2(1) **Definitions – Indigenous Peoples**

Subsection 2(1) of the legislative proposal states that:

> *In this Act, Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982.*

The term "*Aboriginal peoples of Canada*" in section 35 of the *Constitution Act, 1982* will be interpreted by the Supreme Court of Canada very soon in the *Desautel* case[2]. It is currently unknown how this term will be interpreted. One of the issues that was central to this appeal was the debate around the "*source*" of Aboriginal rights and how this informs who can hold Aboriginal rights within the borders of present-day Canada. If the Supreme Court of Canada defines section 35(1), *Constitution Act, 1982* rights holders as being limited to Indigenous peoples within or connected to present day Canada- how could Canada then respect its obligations under section 36 (Indigenous peoples divided by international borders) of UNDRIP that would be subject to this restrictive definition? The incoherence of subjecting UNDRIP rights to Canadian law interpretations of associated with section 35 of the *Constitution Act, 1982* would once again be demonstrated.

UNDRIP reflects the Inherent human rights of Indigenous Peoples, it would

'Bill C-15 Summary' continued from page 8

be inappropriate to define rights holders based on a reference to section 35 of the *Constitution Act, 1982* that is separate from international human rights law.

Bill C-15 does not actually implement UNDRIP

The substantive provisions of what **Bill C-15** actually does is outlined in Sections 4, 5 and 6.

The wording of section 4 b) **Purpose of Act (in part)**

> *(b) provide a framework for the Government of Canada's implementation of the Declaration*.

This wording confirms very clearly that the legislation's purpose is not to implement UNDRIP, but rather to provide a framework for this to occur progressively through other means outlined in the legislation.

The government of Canada already has a section 35 domestic law "*National Reconciliation Framework*" for discussions and negotiations with Indigenous Peoples and Nations (Recognition Tables, Modern Treaty Tables, Self-Government Tables & federal laws creating National Fiscal & Land Institutions and there is a federal plan for a National Infrastructure Institute) that will be used as an UNDRIP "*Framework*" for "*implementation of the Declaration*" if **Bill C-15** becomes law.

The wording of section 5 **Measures for Consistency of Laws and Achieving the Objectives of the Declaration (in part)**

> *The Government of Canada, in consultation and cooperation with Indigenous peoples, must take all measures necessary to ensure that the laws of Canada are consistent with the Declaration*

The difficulty remains that even if this section of the legislative proposal could ground an action by Indigenous Peoples and Nations against the government of Canada for failing to take administrative steps to ensure that the laws of Canada are consistent with UNDRIP, there could only be procedural remedies available. A court could not "*order*" the government of Canada to adopt legislation that conforms to UNDRIP based on this section, nor could it invalidate a federal law for being inconsistent with UNDRIP based on this section. Again, the "*aspirational*" nature of UNDRIP is reinforced by this legislation, with at most, limited procedural remedies available to Indigenous Peoples and Nations.

Wording of section 6 **Action-Plan (in part)**

> ***6 (1)*** *The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration*.

This section of the Bill C-15 gives the government of Canada a dominant

"The government of Canada already has a section 35 domestic law "National Reconciliation Framework" for discussions and negotiations with Indigenous Peoples and Nations (Recognition Tables, Modern Treaty Tables, Self-Government Tables & federal laws creating National Fiscal & Land Institutions)"

Prime Minister Justin Trudeau wearing Red-face!

CIRNAC Min. Bennett exerts influence over AFN & rights negotiations for PM Trudeau.

"If Bill C-15 becomes law all 46 Articles of the UN Declaration will be interpreted and implemented through the colonial Canadian constitutional framework, instead of respecting international law regarding the rights of Indigenous Peoples and the Bill will reinforce the status quo and Canada has made it clear that they want national laws—many of which violate Indigenous rights—to prevail over UNDRIP"

Prime Minister Justin Trudeau receiving a blanket from AFN Nat'l Chief Bellegarde.

'Bill C-15 Summary' continued from page 9

role in interpreting UNDRIP "*principles*" in relation to federal laws, since under Canada's constitutional division of federal and provincial powers, the provincial governments have a veto in subject areas that may affect their jurisdiction.

Moreover, the reference to "*consultation and cooperation with the Indigenous peoples of Canada*" has meant for the past five years that the Trudeau government uses the three National Indigenous Organizations and three National Leaders, though what is called "*Bilateral Mechanisms*", which means three federal-Indigenous Cabinet Sub-Committees, where the federal government controls the funding, pen and agenda.

Wording of section 7 **Annual Report to Parliament (in part)**

> ***7 (1)*** *Within 90 days after the end of each fiscal year, the Minister must, in consultation and cooperation with Indigenous peoples, prepare a report for the previous fiscal year on the measures taken under section 5 and the preparation and implementation of the action plan referred to in section 6.*

As in B.C. with **Bill 41 DRIPA**, This section of **Bill C-15** provides that the government of Canada will control the pen as to the content of the report to Parliament on the federal measures taken to "*prepare and implement an action plan to achieve the objectives of the Declaration*."

Conflicts with land defenders and water protectors will likely not be included in Reports to Parliament, as was the case with the **B.C. Bill 41 DRIPA 2019/2020 Report** to the B.C. Legislature, which excluded any mention of the violation of **UNDRIP Article 10** regarding forced removal of Indigenous Peoples from their territories, as RCMP invaded and forcibly removed the Wet'suwet'en Hereditary Chiefs from their own territory in 2019 and 2020.

Conclusion:

If Bill C-15 becomes law all 46 Articles of the UN Declaration will be interpreted and implemented through the colonial Canadian constitutional framework, instead of respecting international law regarding the rights of Indigenous Peoples and the Bill will reinforce the status quo and Canada has made it clear that they want national laws—many of which violate Indigenous rights—to prevail over UNDRIP.

As noted above, the main sections of **Bill C-15**, particularly section 2, maintain the common law interpretation of section 35(1) and section 35(2) of the *Constitution Act, 1982*, which is heavily based on the **colonial Doctrine of Discovery**.

The application of this doctrine has resulted in a number of problems in legal interpretations in case law based on section 35 of the *Constitution Act, 1982*, which negatively impact in daily life, on the ground for Indigenous Peoples and Nations in Canada including:

'Bill C-15 Summary' conclusion from page 10

- **The imposition of Crown sovereignty over Indigenous peoples, including self-government rights.**
- **Disregarding Indigenous laws and legal traditions.**
- **Establishing that the Crown has "*ultimate title*" to land.**
- **The burden of proof imposed on Indigenous Peoples and Nations to establish their rights in Canadian courts.**
- **The racist and "*frozen in time*" "*Van der Peet test*" for establishing Aboriginal rights.**
- **The ability for the Crown to infringe Aboriginal rights based on the "*Sparrow test*".**
- **The erosion of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles.**

RECOMMENDATION: Based on our analysis we are strongly recommending Indigenous Peoples and Nations reject Bill C-15 and take action to stop Parliament from Passing it! Because it's obvious AFN and many of our Leaders won't!

#LANDBACK!

As families, communities and Nations we need to exercise our international right of self-determination and take back decision-making from *Indian Act* Band Councils and Chiefs' Organizations to develop our own Self-Determination Plans from the ground up, using information we collect from our own research, mapping and planning to restore our cultures, societies and Nationhood and to expand our juridisction over our Indigenous traditional territories and challenge federal, provincial and municipal governments who have illegally or improperly encroached on our Indigenous territories!

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1. **Indigenous Nations' Rights in the Balance,** *An Analysis of the Declaration on the Rights of Indige*
ples, **By Charmaine White Face, *Zumila Wobaga***, 2013, Living Justice Press

2. https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=38734

DRAFT RESOLUTION #06-2020
AFN Annual General Assembly, Dec. 8-9, 2020
TITLE: Conditions to Supporting Bill C-15, Federal Legislation Regarding the *United Nations Declaration on the Rights of Indigenous Peoples*

[EDITOR'S NOTE: The AFN Co-Chairs used procedural tactics to stop this Draft Resolution from being debated and voted on during the AFN Virtual Assembly. It was the only Draft Resolution on Bill C-15. AFN National Chief Bellegarde is relying on past AFN Resolutions as his mandate to support Bill C-15.

"The AFN Co-Chairs used procedural tactics to stop this Draft Resolution from being debated and voted on during the AFN Virtual Assembly. It was the only Draft Resolution on Bill C-15. AFN National Chief Bellegarde is relying on past AFN Resolutions as his mandate to support Bill C-15"

PM Trudeau & NC Bellegarde signing MOU on Joint Priorities in 2017.

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

i. Preambular paragraph 9: Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.

ii. Preambular paragraph 18: Convinced that the recognition of the rights of Indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and Indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.

iii. Article 1: Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

iv. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination in the exercise of their rights in particular that based on their Indigenous origin or identity.

v. Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

vi. Article 4: Indigenous Peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

vii. Article 26 (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

viii. Article 26 (2): Indigenous peoples have the right to own, use, devel-

'AFN Draft Resolution' continued from page 12

op and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

ix. Article 26 (3): States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

x. Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

xi. Article 28 (1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

xii. Article 28 (2): Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

xiii. Article 29 (1): Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

xiv. Article 29 (2): States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

xv. Article 43: The rights recognized herein constitute the minimum standards for the survival, dignity and well-being for the Indigenous peoples of the world.

B. The Truth and Reconciliation Commission of Canada Calls to Action state:

i. Call to Action 43: We call upon federal, provincial, territorial and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

ii. Call to Action 44: We call upon the Government of Canada to develop a national action plan, strategies and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

C. Call for Justice 1.2 v of the National Inquiry into Missing and Murdered Indigenous Women and Girls, calls for full implementation of the UN Declaration.

D. Further to the Alta Outcome Document of the Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly, known as the World

'AFN Draft Resolution' continued from page 13

Conference on Indigenous Peoples held in Alta, Norway on June 10-12, 2013, Indigenous Peoples representing the 7 global geo-political regions including representatives of the global women's caucus and the global youth caucus developed collective recommendations to the State governments committed to developing National Action Plans to implement the UN Declaration.

E. The Assembly of First Nations (AFN) Chiefs-in-Assembly have called for and supported federal legislation on the implementation on the UN Declaration through AFN resolutions:

i. Resolution 37/2007, Support and Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples;

ii. Resolution 23/2013, Implementation of the United Nations Declaration on the Rights of Indigenous Peoples and Indigenous Peoples Day;

iii. Resolution 28/2016, United Nations Declaration on the Rights of Indigenous Peoples 10-year Anniversary;

iv. Resolution 128/2016, UN Declaration legislative framework an interpretation of Canadian laws; and,

v. Resolution 86/2019, Federal legislation to create a framework for implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

F. The Government of Canada has committed, through the 2019 Minister of Justice mandate letter and the 2020 Speech from the Throne, to work with Indigenous Peoples to ensure the introduction of a government bill to support the full implementation of the UN Declaration.

G. The Government of Canada launched an engagement process with Indigenous Nations, governments, communities, organizations and Peoples, leading to the introduction of Bill C-15 An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (Bill C-15) into Parliament. The engagement process was short, inadequate and selective, which is unacceptable. The Government of Canada has a duty to consider significant amendments to Bill C -15 as proposed by Indigenous rights holders through the legislative process in order to remedy the Government of Canada's failure to adequately consult on the development of Bill C-15.

H. On November 28, 2019, the Province of British Columbia (BC) passed Bill 41, the Declaration on the Rights of Indigenous Peoples Act , which establishes the UN Declaration as the framework for reconciliation within provincial authority and requires the provincial government to:

i. ensure that new and existing laws are consistent with the UN Declaration;

ii. develop and implement an action plan in cooperation with Indigenous Peoples to achieve the objectives of the UN Declaration; and,

iii. monitor progress through public annual reporting.

I. Bill 41 enables new decision-making agreements between the Province of British Columbia and Indigenous governing bodies in British Columbia.

J. First Nations in BC have consistently articulated that Bill 41 needs to be the baseline for the

'AFN Draft Resolution' continued from page 14

development of similar federal legislation and any federal legislation introduced must not undermine the work undertaken in BC. There are First Nations in BC and across Canada who do not agree with Canada's Comprehensive Land Claims or 'Inherent Right' policies or processes and seek to have UN Declaration Articles 26 to 29, which speak to the restoration of, or restitution for, Indigenous lands, territories and resources in Canada, implemented.

K. Bill C-15, as currently drafted, does not provide for the effective implementation of the UN Declaration in Canadian law and inappropriately subjugates the rights outlined in the UN Declaration to section 35(1) of the Constitution Act, 1982.

L. The preamble states that the doctrine of discovery is "legally invalid", but Bill C-15 contains nothing to acknowledge or reverse the common law's reliance on the doctrine of discovery in its interpretation of s. 35 of the Constitution Act, 1982.

M. The preamble states the urgent need to respect and promote the inherent rights of Indigenous Peoples, including their rights to their lands, territories and resources, but then contains no substantive provisions to support these objectives in Bill C-15.

N. The preamble weakly states that the "declaration is affirmed as a source of the interpretation of Canadian law", whereas the text of Bill C-15 employs even weaker wording to the effect that the declaration has "application in Canadian law".

O. In Bill C-15, Canada relies on the current legal framework applicable to s. 35 of the Constitution Act, 1982 to implement the UN Declaration in Canadian law. First Nations continue to have serious concerns pertaining to the relationship between Bill C-15 and s. 35(1) of the Constitution Act, 1982.

P. The wording of Section 2(2) of Bill C-15 lacks clarity and does not clearly implement the UN Declaration, including failing to state clearly how the laws of Canada are to be interpreted in accordance with the UN Declaration. First Nations question the rationale of potentially subjecting the UN Declaration to s. 35(1) of the Constitution Act, 1982 because the UN Declaration is an international human rights law instrument and the Crown (and Courts) have repeatedly stated that the source of "Aboriginal rights" is entirely separate from human rights law.

Q. The common law interpretation of s. 35(1) of the Constitution Act, 1982 is heavily based on the Doctrine of Discovery. The application of this doctrine has resulted in numerous problematic legal interpretations associated with s. 35 of the Constitution Act, 1982, including:

i. the imposition of assumed Crown sovereignty over Indigenous Peoples, including self-government rights;

ii. disregarding Indigenous laws and legal traditions;

iii. establishing that the Crown has "ultimate title" to land;

iv. the burden of proof imposed on Indigenous Peoples to establish their rights in Canadian courts;

v. the racist and "frozen in time" "Van der Peet test" for establishing aboriginal rights;

vi. the ability for the Crown to infringe aboriginal rights based on the "Sparrow test" and;

vii. the erosion of the duty to consult and accommodate to nothing more than a procedural right

'AFN Draft Resolution' continued from page 15

that is reviewable based on administrative law principles.

R. It is not possible to implement the UN Declaration and respect the recommendations of the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission's Calls to Action by subjugating the UN Declaration rights to the current legal framework associated with s. 35 of the Constitution Act, 1982. It is disingenuous for the preamble of Bill C-15 to state it is rejecting the Doctrine of Discovery and that there is harmony and consistency with this approach.

S. Given the inconsistency of the UN Declaration with the current common law interpretation of s. 35(1) of the Constitution Act, 1982, it is absolutely essential that any federal legislation pertaining to the UN Declaration, including Bill C-15, effectively implement the provisions of the UN Declaration by explicitly stating that the laws of Canada, which includes s. 35(1) of the Constitution Act, 1982, be interpreted in accordance with the UN Declaration (rather than the current wording of Bill C-15, which states that the UN Declaration legislation must be construed in accordance with and not derogate from s. 35(1) of the Constitution Act, 1982).

T. Bill C-15 is also incompatible with the Truth and Reconciliation Commission's Calls to Action pertaining to the UN Declaration, including the call to "fully adopt and implement" the UN Declaration as the framework for reconciliation.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Support amendments recommended by First Nations, as conditions for support of Bill C-15 An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (Bill C-15) to ensure that the purpose of Bill C-15 is to implement the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), that will not reinforce the status quo and rely on other means or processes to implement the Declaration, as the current version of Bill C-15 provides in sections 1 through 7.

2. Call on the Government of Canada, the House of Commons and the Senate to:

a. ensure Bill C-15 is consistent with Bill 41, Declaration on the Rights of Indigenous Peoples Act and does not detract or undermine any work that is being undertaken at provincial or regional levels

b. amend Bill C-15 to accommodate First Nations in BC and across Canada who do not agree with the BC Treaty Negotiations Policy, Canada's Comprehensive Land Claims or 'Inherent Right' Policies or Processes

c. amend Bill C-15 to have UN Declaration Articles 26 to 29, which speak to the restoration of, or restitution for, Indigenous lands, territories and resources implemented in Canada, explicitly included in an amended section 2(2) of Bill C-15 regarding Indigenous Peoples' territorial jurisdiction and Indigenous law, which are the foundations of self-determination.

d. ensure Bill C-15 explicitly repudiates the Doctrine of Discovery and the

"Support amendments recommended by First Nations, as conditions for support of Bill C-15 An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (Bill C-15) to ensure that the purpose of Bill C-15 is to implement the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), that will not reinforce the status quo and rely on other means or processes to implement the Declaration, as the current version of Bill C-15 provides in sections 1 through 7"

'AFN Draft Resolution' conclusion from page 16

doctrine of terra nullius as recommended by the 1996 Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission in an amended section 2(2) of Bill C-15.

3. Direct the Assembly of First Nations (AFN) National Chief and Executive Committee to work with the AFN Chiefs Committee on Lands, Territories and Resources to develop amendments to Bill C-15 for consideration by First Nations, followed by presentation to the Government of Canada as conditions for supporting Bill C-15 before the Bill achieves royal assent.

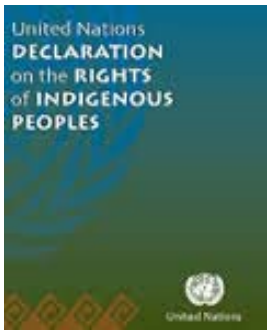
MOVED BY: Chief Judy Wilson, Neskonlith Indian Band, B.C.

SECONDED BY: Chief Lance Haymond, Kebaowek First Nation, Quebec

[EDITOR'S NOTE: The Mover withdrew the Draft Resolution after the Seconder revised the wording of the Original Draft Resolution from the Mover's version. According to AFN legal Counsel (Stuart Wuttke) , the Seconder was not permitted to become the Mover with a new Seconder or to speak to the Draft Revised Resolution #6-2020]

Top: AFN National Chief Bellegarde

Bottom L to R: Wille Littlechild, Paul Joffe, Mary Ellen Turpel-Lafond
AFN Legal Team for Federal Engagement on UNDRIP Bill C-15



From the Book "The Reconciliation Manifesto" The Six-Step Program to Decolonization By Arthur Manuel [Bill C-15 is a Fail!]

Arthur Manuel in Standing Rock, Lakota Territory in November 2016.

Hope, for me, comes from both the Indigenous youth from across the country who are ready to fight for our rights and from the non-Indigenous who I meet in university lecture halls and church basements who are not only open to re-envisioning Canada, but are willing to stand shoulder to shoulder with us in remaking it. That is our new starting point.

Travelling along the path toward decolonization will take courage for Canadians. But once you begin, I think you will find the route is not complicated and the only guide you will need is a sense of justice and decency. No need to go through the thousands of pages of government commissioned reports and many thousands more of court judgements setting out our rights, and the scores of UN reports describing Canada as a human rights abuser, to find your way. In fact, I will make it easy for you. Below is a six-point map of the path to decolonization that Canada's own experts have already laid out:

"Formally denounce the racist **doctrine of discovery** and **terra nullius** as justification for settler presence on our lands, as well as any other doctrines, laws or policies that would allow you to address us on any other basis than nation to nation."

1. ***The first step is a simple one and has been advocated by both the RCAP and the TRC: Formally denounce the racist doctrine of discovery and terra nullius as justification for settler presence on our lands, as well as any other doctrines, laws or policies that would allow you to address us on any other basis than nation to nation.***

2. ***As part of the nation to nation negotiation you must, logically, recognize our right to self-determination, which is the essential decolonizing remedy to move Indigenous peoples from dependency to freedom.***

3. ***Acknowledgement of our right to self-determination must be according to international human rights standards and include ecological and equitable development principles, Indigenous knowledge systems, laws, relationships to land, world views, technologies, innovations and practices and, of course, recognition and affirmation of our Aboriginal title and rights to the lands that***

'6 Step Decolonization Program' continued from page 18

the Creator has given each nation and which we have inhabited since time immemorial.

4. ***At this point we can finally sit down together for the long, grown-up talk about who we are and what we need, and who you are and what you need, and we can then begin to sort out the complicated questions about access to our lands and sharing the benefits. These talks can, indeed, lead to reconciliation, but only after our rights as title holders and decision makers on the land and our economic and cultural needs are met. We in turn will ensure that your very real human right to be here after four hundred years is respected and your economic and cultural needs are also met.***
5. ***Anything that we agree to in access and benefits must also include clear jurisdictional lines of authority based on the standard of free, prior and informed consent of Indigenous peoples and decision making that incorporates environmental reviews and oversight in accordance with Indigenous laws.***
6. ***In concrete Canadian terms, Section 35 of the Canadian Constitution must be made to comply with Article 1 of the International Covenant on Civil & Political Rights/ International Covenant on Educational, Social & Cultural Rights and Article 3 of UNDRIP and all of the colonial laws must be struck from Canadian books, thereby implementing the Indigenous right to freely determine our own political status and freely pursue our economic, social and cultural development.***

I promise you again that this does not have to be a painful process. It can be a liberation for you as well as for us. These simple steps 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 past of colonialism and racism, that has been so catastrophic 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.

But I hope you forgive us if we also insist that, before we actually embark on this new relationship with Canada, we have a kind of internationally monitored pre-nup. (To be honest, we have had a little too much experience with the European forked tongue in general and Prime Minister Trudeau's in particular.) So we would also be calling for the establishment at the UN of an oversight mechanism for Indigenous Peoples. The appropriate UN body should formulate recommendations and proposals for the development of measures and activities to 1) prevent self-determination violations by all states, including Canada, against Indigenous peoples; 2) insist any violations of the right to self-determination are immediately corrected by the states, including Canada; and 3) coordinate cooperation with other UN bodies to ensure international oversight of self-determination for Indigenous peoples and immediately report any violations to the General Assembly. At the same time, Indigenous peoples must also be given permanent observer status within the UN system to enable our voices to be directly heard within the General Assembly.

We will know that Canada is finally decolonized when Indigenous peoples are exercising our inherent political and legal powers in our own territories up to the standard recognized by the United Nations, when your government has instituted sweeping policy reform based on Indige-

'6 Step Decolonization Program' conclusion from page 19

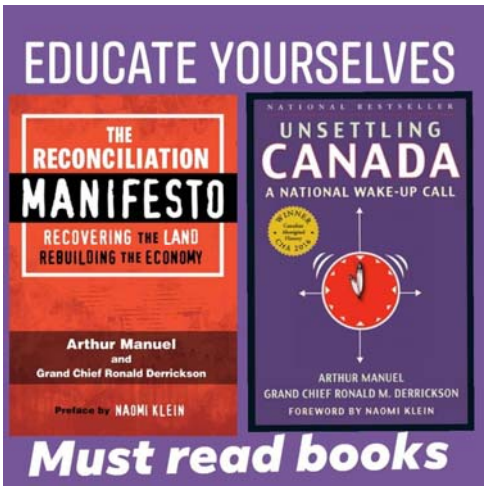
nous rights standards and when our future generations can live in sustainable ways on an Indigenous designed and driven economy.

This cannot be done in a day, but the process can be started today. One hundred and fifty years is a long time to wait for justice, and there have already been too many missed chances. In fact, I sometimes wonder where we would be if Justin Trudeau's father and my father, Pierre Trudeau and George Manuel, had sat down after the Red Paper presentation ceremony in 1970 with a resolve to break the chains of colonialism and the crushing weight of poverty it shackles Indigenous peoples with. For Indigenous Peoples, it would have meant thousands of years more life than the stunted life expectancy colonialism leaves us with. Thousands of years less imprisonment and despair than colonialism serves us with. Thousands of years more education that colonialism has denied us. It would have allowed us to free the genius of our peoples to build vibrant societies within the Canadian space.

But it is never too late to start to prevent these scourges of the past from populating our collective future. It is not necessary to pass on this legacy of misery to yet another generation. Because we must be clear, unless we fix Canada in a fundamental way, we will be leaving our children with the same bitter pill that our fathers left us.

So Mr. Prime Minister, you must know that Canada's cruel legacy cannot be settled by fiddling with programs and services or by hugs and tears. We need fundamental change to fix Canada because it is Canada that is broken. Either that, or we pass on this sad legacy to our children. Mine, I know, have run out of patience. They are ready to fight it out and this is the last thing I want for them—or for your children, for that matter. So let us avoid that. Relieve your children from the international embarrassment and the moral disgrace of riding on our backs and relieve my children from the crushing burden of carrying them. If we do this right, some day they may even be able to walk freely in friendship.

[*Excerpt from the book* ***The Reconciliation Manifesto: Recovering the Land, Rebuilding the Economy****, by Arthur Manuel & Grand Chief Ronald Derrickson, James Lorimer & Company Limited, Publishers 2017, pages 275-279.*]



Canada's Genocidal, Racist, Colonial, Doctrine of Discovery

FIRST RECOMMENDATION OF THE 1996 ROYAL COMMISSION ON ABORIGINAL PEOPLES

Canada's courts are in a conflict-of-interest, including the Supreme Court of Canada. Canada bases its assertion of sovereignty and territorial integrity on the racist, colonial Doctrine of Discovery. The first recommendation of the **1996 Royal Commission on Aboriginal Peoples' Report** was as follows:

The Commission recommends that:

1.16.1 To begin the process, the federal, provincial and territorial governments, on behalf of the people of Canada, and national Aboriginal organizations, on behalf of the Aboriginal peoples of Canada, commit themselves to building a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility; these principles to form the ethical basis of relations between Aboriginal and non-Aboriginal societies in the future and to be enshrined in a new Royal Proclamation and its companion legislation (see Volume 2, Chapter 2).

1.16.2 Federal, provincial and territorial governments further the process of renewal by

(a) acknowledging that concepts such as terra nullius and the doctrine of discovery are factually, legally and morally wrong;

(b) declaring that such concepts no longer form part of law making or policy development by Canadian governments;

(c) declaring that such concepts will not be the basis of arguments presented to the courts;

(d) committing themselves to renewal of the federation through consensual means to overcome the historical legacy of these concepts, which are impediments to Aboriginal people assuming their rightful place in the Canadian federation; and

(e) including a declaration to these ends in the new Royal Proclamation and its companion legislation."

SUPREME COURT OF CANADA & TRUTH AND RECONCILIATION COMMISSION ON COLONIAL DOCTRINE OF DISCOVERY

The **Supreme Court of Canada's** (**SCC**) Tsilhqot'in decision in 2014, dismissed the argument Canada was Terra Nullius at the time of discovery, but the SCC left the Doctrine of Discovery in place by granting the Tsilhqot'in Peoples the sovereignty-restricted ownership of '*Aboriginal title*' to their traditional lands.

> "*Para. 69. … "At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land…The doctrine of terra nullius (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the Royal Proclamation (1763).*"

'Colonial Doctrine of Discovery' conclusion from page 21

The 2015 report of the **Truth and Reconciliation Commission of Canada** (**TRC**) called for the Government of Canada to:

45. "We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:

i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.

ii. Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation."

"The UN General Assembly has indicated that the continuation of colonialism is "a crime which constitutes a violation of the Charter of the United Nations ... and the principles of international law". Colonial-era doctrine cannot continue to oppress and impoverish generations of indigenous peoples and to deny them jurisdiction to exercise their indigenous laws and legal orders"

UNITED NATIONS ON THE COLONIAL DOCTRINE OF DISCOVERY

The **2007 United Nations Declaration on the Rights of Indigenous Peoples** (**UNDRIP**) recognizes that doctrines such as the Doctrine of Discovery are not legally valid and that the continuation of colonialism is a crime which violates the Charter of the United Nations, the preamble states:

"Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,"

In 2014, the **UN Economic and Social Council**, Permanent Forum on Indigenous Issues; Thirteenth Session: A Study on the impacts of the Doctrine of Discovery on Indigenous Peoples, Including Mechanisms, Processes and Instruments of Redress, with Reference to the Declaration, and Particularly to Articles 26-28, 32 and 40, at para. 6. E/C.19/2014/3 http://caid.ca/UNESRPFII.C19.2014.pdf

6. "The UN General Assembly has indicated that the continuation of colonialism is "a crime which constitutes a violation of the Charter of the United Nations ... and the principles of international law". Colonial-era doctrine cannot continue to oppress and impoverish generations of indigenous peoples and to deny them jurisdiction to exercise their indigenous laws and legal orders."

As one commentator has noted:

"Without the Doctrine of Discovery, the current status quo of colonial control over Indigenous Peoples will no longer exist. Indigenous sovereignty and jurisdiction will need to be defined so that a new relationship can then be established based on the reconciliation of Indigenous sovereign rights with Crown rights."

#LAND BACK

By Russ Diabo, Truth Before Reconciliation Campaign, July 29, 2020

Involves a big struggle-since **Royal Proclamation of 1763** (for 257 years) the Crown seeks the extinguishment/Surrender of Aboriginal Title!

In 1973, PM Trudeau unilaterally set out **Canada's Land Claims Policies** (Comprehensive & Specific)-need return of stolen lands, territories & resources! These federal Land Claims policies are about ending our original connection to our lands.

The Provinces and Territories control most of the stolen lands, territories & resources and the federal government controls the rest. As my best friend Art Manuel used to say "*if you add up all of the reserve lands in Canada it comes to 0.2%*" of Canada's land mass. The federal and provincial government's control the rest.

We've never had a say in Canada's unilateral Land Claims extinguishment/surrender policies, and only minimal say in process. Even today these policies from 1973 are basically still the same as then--Justin Trudeau is implementing his father's Land Claims policies.

Canada's so-called *'Inherent Right*' to "*Self-Government*" policy is the umbrella policy of the federal government and Land Claims falls underneath the "*Self-Government*" policy.

All of Canada's policies and laws are designed to assimilate the original Indigenous Nations, band-by-band and terminate collective their rights to come under federal and provincial jurisdiction, until all Indian Act Bands are converted into 4th level ethnic governments, like the members of the "*Land Claims Agreement Coalition*" who have already compromised their constitutional rights to join Canada's Federation as 4th level ethnic governments, lower in status than the federal, provincial and municipal governments.

In 1983, Canada's Constitution Act 1982, was amended to create a new category of "*Land Claim Agreements*" Treaties, entrenching Pierre Trudeaus "*Land Claims*" concept into Canada's constitution.

Canada's policy is to have the bands with historic Treaties to implement their Treaties through the federal "*Self-Government*" policy and settle "*Treaty Land Entitlement*" through the federal Specific Claims policy.

In 2016, the Justin Trudeau government established pan-Indigenous "*Recognition and Self-Determination*" Tables with First Nations, Metis and Inuit. These are non-binding discussions are intended to lead to "*jointly developed*" negotiation mandates from federal and provincial Cabinets whose jurisdictions may be affected. However, the federal and provincial negotiators have an effective veto over what gets sent to the federal and provincial Cabinets as a binding negotiation matter.

Trudeau's **TWO TRACK TERMINATION PLAN** is working well so far, because the discussion and negotiations with Chiefs & Councils are held in secret from the people, until agreements are presented band-by-band to be voted on and ratified, often with only a 25% voting threshold, the feds want to promote the Trudeau government's version of "*self-determination*" by changing a band's legal and political status for generations to come, so they need these **Modern Section 35 Termination Agreements** to show courts later, if conflicts over interpretation of rights in an agreement comes about.

Using the federal **First Nations Tax Commission**, Canada is working on assimilating Indian Act bands into Canada's property and tax systems by eliminating Indian Reserves through legislation called the **First Nations Property Ownership Initiative** to privatize Indian Reserve residential lands. This was started by the Harper government and the Trudeau government has continued with it under a new name it's now called the **Indigenous Land Title Initiative**, but don't be fooled by the name, it is still a privatization scheme to break up communally held reserve lands into private property to be eventually placed under provincial land registries.

#LandBack will only happen if the grassroots peoples demand it and take action. Despite the problems with UNDRIP it does contain minimum international standards for land restoration and restitution if land is not restored! [EDITOR'S NOTE: However! If the federal UNDRIP Bill C-15 becomes law, the "*Self-Government*" and "*Land Claims*" policies will be used to interpret UNDRIP!]

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: https://www.russdiabo.com/

THE LAST WORD: Statement by Long-Time Odawa Policy Analyst, Rolland Pangowish, on AFN and Chiefs' "Negotiations" with Canada

"While Canada has been fighting First Nation's rights and grievances in Court, its preference for "*negotiations*" is misleading. What it calls "*negotiations*" are actually restrictive processes that are based on compromising and limiting Indigenous rights within federally managed discussions from which solutions are predetermined by federal policy, wherein the First Nations are expected to release all rights and grievsnces related to the case at hand, in exchange for choosing extremely limited settlement options defined in federal guidelines. Not only does this compound the conflict of interest Crown representatives regularly engage in, despite what their Courts have defined as a fiduciary relationship with First Nations. Negotiations with Canada are anything but fair and equitable, compensation is not possible. Many Canadians have no idea how colonial attitudes and racism continue in this modern age."

"**Re APTN Story: Despite promise of reconciliation, Trudeau spent nearly $100M fighting First Nations in court during first years in power**—I wanted to send this message to APTN and congratulate them on finally approaching real journalism on an issue not covered very often, but what it exposes is so much deeper than they realize. At least the story might touch off some badly needed discussion. The hypocrisy the story hints at is rife throughout the federal bureaucracy. Politicians come and go, but the same bureaucrats are behind federal policies, no matter what party is in Government. I know others know all about this stuff first hand from experience fighting Canada in Ottawa for many years. It amazes me how many people don't see the hypocrisy that controls Canada's deceptive policies regarding Indigenous Peoples. Think about this one, the Chiefs say they support Cindy Blackstock's efforts to expose Canada's discrimination with respect to First Nations childcare. Yet, they proceed to take money from Canada on the issue and support faulty federal legislation on the issue, all the while ignoring the fact that Canada continues to fight Cindy's case and ignores Supreme Court direction."

"Hypocrisy abounds all over the place. Nobody worries about it as long as federal dollars continue to flow to AFN and regional organizations. These Chiefs have no shame in contradicting themselves, when money is flashed. Their true priorities lie in securing as much funding as possible "*on behalf*" of First Nation Peoples. Unfortunately, the First Nation Peoples never seem to see benefits or have any say. It makes me sick, when I think about how our peoples are held down by their own leaders and don't even seem to know it." - Rolland Pangowish, Wiky, December 18, 2020