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FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

Nation-to-Nation Liberal Style: *Replacing UNDRIP Standards with Canada's Racist, Colonial Laws & Termination Policies*

L to R: Minister of Indigenous-Crown Relations, Carolyn Bennett, Prime Minister Justin Trudeau, Minister of Justice & Attorney-General, Jody Wilson-Raybould on Aboriginal Day 2017.

By Russell Diabo

On behalf of the Algonquin Chiefs of Barriere Lake, Timiskaming and Wolf Lake, in mid-August of this year I attended the United Nations' Committee on the Elimination of Racial Discrimination (CERD) Meeting in Geneva, Switzerland, where Canada was scheduled to appear on August 14,15, 2017, to report on progress in eliminating racism and discrimination. I was there to present evidence that Canada's Comprehensive Claims and Self-government policies are racist and discriminatory towards Indigenous proprietary rights and jurisdiction.

The three Algonquin First Nations were part of a **Joint Recommendations to CERD** on the key issues of: Indigenous Territories, Colonial Doctrines and the myth of Underlying Crown Title. (see page 20 of this newsletter for full text)

As part of the Indigenous Caucus speakers list, I told the CERD members that since the Liberal Party of Canada has formed government in 2015, the federal government has operated in a top down, non-transparent fashion regarding changes to law and policy affecting Indigenous Peoples, by-passing the legitimate rights-holding Indigenous Peoples: the Peoples in the communities, not national Indigenous organizations.

I told the CERD members this because of my observations of the Trudeau government approach towards implementing its 2015 Indigenous Platform over the past two years.

Federal Control & Management Structure

In January 2016, a few months after forming government, Prime Minister Justin Trudeau appointed Michael Wernick to the top job in the federal bureaucracy at the centre of the federal government, Clerk of the Privy Council.

Special points of interest:

- **Trudeau's "Nation to Nation" Grand Deception**
- **Art Manuel on Canada as a White Supremist Country**
- **A Tribute to a Great Indigenous Leader, Arthur Manuel**
- **Joint Recommendations From Indigenous Nations to UN CERD Members**

Inside this issue:

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Michael Wernick, Clerk of the Privy Council, former DM of AANDC

Wernick was the long-time Deputy Minister of Indian Affairs, who spent nearly a decade helping implement Harper’s agenda against Indigenous peoples. What does it say about Prime Minister Trudeau’s own plans on Indigenous issues now that this man is now coordinating the civil service?

It was in a short press release from Davos, Switzerland on January 20, 2016, that Prime Minister Trudeau announced he was replacing the previous Clerk of the Privy Council (PCO) and Secretary to Cabinet, Ms. Janice Charette with the appointment of Mr. Michael Wernick to that position.

However, it is unclear how long Mr. Wernick will remain the Clerk of the PCO as the Prime Minister’s short announcement from almost two years ago stated Mr. Wernick will provide the government with “advice on a process to fill the position on a permanent basis.”

So, for most of the first two years of the Trudeau government Mr. Wernick has been the top federal official in Canada at the “centre” of government as Secretary to Cabinet.

“for eight years Mr. Wernick had no qualms implementing odious policy measures and a suite of federal legislation largely opposed by Indigenous Peoples, particularly First Nations”

Prime Minister Trudeau praised Mr. Wernick at the time of his appointment by stating he has the “depth of experience and the skills we need to move full speed ahead on the implementation and delivery of our government’s agenda.”

Mr. Wernick has reportedly 35 years experience in the federal public service and is considered by some as a capable “enforcer” of federal policy objectives. He was one of the longest serving Deputy Minister’s of Indian and Northern Affairs Canada having held that position for most of the Harper decade (2006-2014), before he was promoted to the PCO in June 2014.

While many commentators have praised Mr. Wernick for his tenure at INAC, from an Indigenous perspective it should be recalled that under the direction of the Prime Ministers Office, for eight years Mr. Wernick had no qualms implementing odious policy measures and a suite of federal legislation largely opposed by Indigenous Peoples, particularly First Nations.

Some highlights of Mr. Wernick’s management experience at INAC includes the following:

He supported the PMO in keeping a lid on Aboriginal files after the 2006 election, as Aboriginal Peoples were downgraded from being a federal priority and the Harper government rejected the Liberal’s 2005 Kelowna Accord. In particular, this included instituting funding cuts and caps to First Nation programs and organizations.

He supported the PMO in undermining Indigenous Peoples at the United Nations, including working against the adoption of the UN Declaration on the Rights of Indigenous Peoples.

He supported the PMO by setting up INAC “Hot Spot” reporting to spy on First Nations in order to identify the First Nations leaders, participants and outside supporters of First Nation occupations and protests, particularly while the “Idle No More” movement was at its height.

He supported the PMO by implementing federal “core mandates” to pressure First Nations to sign Modern Treaties/Self-Government Agreements that would amount to a de-facto termination of Aboriginal Title and rights.

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He supported the PMO by assisting with implementation of federal suite of legislation that undermines the collective rights of First Nations by emphasizing individual rights, as well as, omnibus legislation undermining federal regulation of the environment.

He supported the PMO by undermining the Specific Claims process to make it harder to research and submit specific claims to INAC or the Specific Claims Tribunal.

He supported the PMO by meddling in the internal politics of First Nations, including trying to engineer the passage of the draconian First Nations Education Act.

He supported the PMO by changing the funding policy of Tribal Councils to exclude political advocacy for member bands.

He supported the PMO after Ms. Cindy Blackstock had filed a complaint to the Canadian Human Rights Tribunal against the federal government for failing to address First Nations' child welfare discrimination, and led the federal retaliation against Cindy Blackstock by spying on her. After she complained about INAC's spying on her he attempted a cover-up of the INAC operation.

Based on his eight-year role in helping Stephen Harper deny and infringe on Inherent, Aboriginal and Treaty rights I consider Mr. Wernick's appointment a bad sign—no matter for how long—and is a major concern.

"Based on his eight-year role in helping Stephen Harper deny and infringe on Inherent, Aboriginal and Treaty rights I consider Mr. Wernick's appointment a bad sign—no matter for how long—and is a major concern"

Deputy Minister & Assistant Deputy Minister Oversight Committee

Michael Wernick is in effect the Prime Minister's Deputy Minister who ultimately manages the DMOC, whose purpose is described by INAC as follows:

> *The role of the Deputy Minister Oversight Committee (DMOC) is to provide direction and guidance to departments in fulfilling federal responsibilities under agreements between the Crown and Indigenous peoples,* ***and in developing whole-of-government approaches to addressing implementation issues****. The reference to policies and programs that you see on the [INAC] website is about ensuring that Canada has the right policies and programs in place to ensure that we're meeting our* ***obligations under modern treaties, self-government agreements, and - eventually - other nation-to-nation agreements****…* [emphasis added]

The Trudeau government's top-down approach is very similar to Stephen Harper's: the DMOC is the central part of the federal control and management structure that includes the federal interpretation of the 2015 Liberal Indigenous Platform. Trudeau's 2017 Mandate Letter to Minister Bennett states this, and it appears to apply to all federal Ministers:

> *I expect you to work closely with your Deputy Minister and his or her senior officials to ensure that the ongoing work of your department is undertaken in a professional manner and that decisions are made in the public interest. Your Deputy Minister will brief you on issues your department may be facing that may require decisions to be made quickly.* ***It is my expectation that you will apply our val-***

L to R: Michael Wernick, Clerk of PCO & Perry Bellegarde, AFN National Chief

Former Liberal PM Chretien with current Liberal PM Trudeau

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> ***ues and principles to these decisions**, so that issues facing your department are dealt with in a timely and responsible manner, and in a way that is consistent with the overall direction of our government.* [emphasis added]
>
> *Our ability, as a government, to successfully implement our platform depends on our ability to thoughtfully consider the professional, non-partisan advice of public servants. Each and every time a government employee comes to work, they do so in service to Canada, with a goal of improving our country and the lives of all Canadians. I expect you to establish a collaborative working relationship with your Deputy Minister, whose role, and the role of public servants under his or her direction, is to support you in the performance of your responsibilities.*

"Since forming government Prime Minister Justin Trudeau has operated in secret regarding his government's interpretation of the 2015 Liberal Indigenous Platform"

It is important to understand the structure of the Trudeau government's "*whole of government*" top-down approach where Cabinet Ministers are guided by Deputy Ministers who the Prime Minister also appoints. The DMOC is headed up by Michael Wernick. Through Wernick and the Prime Ministers' Office and ultimately the Prime Minister, the federal objectives toward Indigenous Peoples are carried out through policy and law.

Canada's Budget 2017, set money aside for a secretariat inside of the Privy Council Office:

> *$3.1 million over three years to establish a secretariat within the Privy Council Office that will support the Working Group of Ministers that will be responsible for a review of laws, policies and operational practices to ensure that Canada is: meeting its constitutional obligations with respect to Indigenous and treaty rights; adhering to international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples; and supporting the implementation of the Truth and Reconciliation Commission of Canada's Calls to Action.*

Joanne Wilkinson is the Assistant Secretary to the Cabinet on the Review of Laws and Policies Related to Indigenous Peoples and heads up the PCO Secretariat.

PM Trudeau announcing his two-track approach to Indigenous Reconciliation with 3 NAO Leaders, in Ottawa, Dec. 15, 2016.

Federal Management & Control Processes Affecting Indigenous Peoples

Since forming government Prime Minister Justin Trudeau has operated in secret regarding his government's interpretation of the 2015 Liberal Indigenous Platform.

What we do know is the following Trudeau Processes, Principles and INAC Restructuring are supposed to lead to a National Action Plan on implementing the **United Nations Declaration on the Rights of Indigenous Peoples** (**UNDRIP**):

- **A Bilateral Mechanism** – an AFN-Federal Cabinet Committee where the AFN National Chief & PM meets annually and AFN delegations meet federal Ministers semi-annually on shared priorities as set out in an AFN-Canada MOU.

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- **A Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples** – Chaired by Justice Minister & Attorney-General Jody Wilson-Raybould, but includes the Ministers of Indigenous-Crown Relations, Indigenous Services, Fisheries, Oceans and the Canadian Coast Guard, Health, Families, Children and Social Development and Natural Resources. Supposedly, this working-group is to "de-colonize" Canada's laws & policies.
- **10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples** – Released without consulting Indigenous Peoples, including the National Indigenous Leaders who are supposedly the Trudeau government's partners.
- **Dissolving/Splitting Department of Indian Affairs & Northern Development into two new departments** – Announced without consultation with Indigenous Peoples, including the National Indigenous Leaders who are supposedly the Trudeau government's partners.
- **Establishment of 50 "Rights and Recognition" Tables across Canada** – These were initially called "exploratory tables". The federal government has kept it secret who is involved in the "discussions" and what they involve, but reportedly these outcomes from tables will contribute to new policy and legislation affecting Indigenous Peoples.

These federal processes are all behind closed door secret Liberal processes, including the processes to develop the federal "10 Principles" and split INAC into two departments.

What Prime Minister Justin Trudeau is calling "rights and recognition" tables were previously called "exploratory tables" and it was previously reported that"

> *The exploratory tables, an arena for these new interpretations of section 35 to take form, could impact treaty negotiations, self-government powers and resource management across Canada — among other things under Wild's responsibility*. [Source: Joe Wild, senior Assistant Deputy Minister for Treaties and Aboriginal Government INAC June 4, 2016, ipolitics Article]

Yet these tables continue to remain secret even though they could be used to create new federal policy and law.

AFN NC Bellegarde excluded from FMM on Climate Change in Ottawa, Dec. 9, 2016.

"federal processes are all behind closed door secret Liberal processes, including the processes to develop the federal "10 Principles" and split INAC into two departments"

Ministerial Working-Group on Law & Policy Review

In his Liberal 2015 Indigenous Platform, Justin Trudeau made numerous key promises regarding federal-Indigenous relations and policy. Highlights of Trudeau's promises are the following:

- A Nation-to-Nation Process.
- A National Reconciliation Framework.
- Enact the 94 TRC recommendations, including adoption of UNDRIP.
- Recognize and respect Aboriginal title & rights in accordance with Canada's Constitutional obligations, and further those enshrined in UNDRIP.

Joe Wild, ADM, INAC, Treaties & Aboriginal Governance (TAG)

PM Trudeau says no to re-opening the constitution at year-end press conference, Dec. 12, 2016.

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- Immediately lift the two percent cap on funding for First Nations programs, and establish a new fiscal relationship. with First Nations.
- Launch a national public inquiry into missing and murdered indigenous women.

Undertake a full review of regulatory law, policies, and operational practices, in full partnership and consultation with First Nations to ensure that the Crown is fully executing its consultation, accommodation, and consent obligations, including on resource development and energy infrastructure project reviews and assessments, **in accordance with our constitutional and international human rights obligations**. (emphasis added)

"[Jody], along with her Cabinet colleagues, will now lead a joint effort with Indigenous Peoples, aimed at decolonializing Canada's laws and policies that for so long have held back, rather than recognized, Indigenous rights… "

It is the last promise cited above is where the Ministerial Working-Group on law & policies related to Indigenous Peoples gets it origin. Prime Minister Justin Trudeau made a reference to the Ministerial Working-Group during his speech at the AFN Special Chiefs' Assembly on December 6, 2016:

> *Jody Wilson-Raybould is Canada's first Indigenous Minister of Justice and Attorney General.*
>
> *Not only is she the right person – Indigenous or otherwise – for this central role, she is our government's loud and clear message to our country that the laws of this land that were, and in many ways still are, used to control and constrain Indigenous Peoples are now the particular responsibility of a First Nations person. An Indigenous woman.*
>
> ***She, along with her Cabinet colleagues, will now lead a joint effort with Indigenous Peoples, aimed at decolonializing Canada's laws and policies that for so long have held back, rather than recognized, Indigenous rights…*** (emphasis added)
>
> *In May, Minister Bennett went to the UN to make clear our government's unqualified support for the United Nations Declaration for the Rights of Indigenous Peoples. We remain committed to its adoption and implementation in full partnership and in consultation with Indigenous Peoples.*
>
> ***I have asked Minister Wilson-Raybould to lead the work collectively with her Cabinet colleagues and First Nations, the Métis Nation and Inuit Peoples to ensure that this gets done.*** (emphasis added)

L to R: Prime Minister Trudeau & Justice Minister Jody Wilson-Raybould

On December 15, 2016, following the December AFN-SCA, Prime Minister Justin Trudeau announced a "Bilateral Mechanism" between AFN and the federal government.

> *Our overarching goal is to renew the relationship between Canada and Indigenous peoples. This renewal must be a nation-to-nation relationship, based on recognition, respect for rights, co-operation, and partnership.*
>
> ***First, we will create permanent bilateral mechanisms with the Assembly of First Nations (AFN) and First Na-***

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> ***tions**, the Inuit Tapiriit Kanatami and the four Inuit Nunangat Regions, and the Métis National Council and its governing members. In this Kelowna-like process, every year, **we will meet to develop policy on shared priorities, and monitor our progress going forward. Similar meetings with key Cabinet Ministers will take place at least twice each year**.*
>
> *Second, we will establish an Interim Board of Directors to make recommendations on the creation of a National Council for Reconciliation. The Interim Board will begin an engagement process to develop recommendations on the scope and mandate of the National Council.*
>
> *Third, we will provide $10 million to support the important work of the National Centre for Truth and Reconciliation located at the University of Manitoba, as recommended in Call to Action 78. This contribution will help to ensure that the history and legacy of Canada's residential school system is remembered.*

On February 22, 2017, Prime Minister Justin Trudeau announced the creation of the Ministers' Working-Group on policy & law related to Indigenous Peoples.

> *The Working Group of Ministers responsible for the review **will examine relevant federal laws, policies, and operational practices to help ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and treaty rights; adhering to international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples; and supporting the implementation of the Truth and Reconciliation Commission's Calls to Action**.,,* (emphasis added)
>
> *The Minister of Justice and Attorney General of Canada, the Honourable **Jody Wilson-Raybould, will chair the Working Group**, which will comprise six ministers who have significant responsibilities for the relevant statutes and policies to be reviewed.* (emphasis added)
>
> ***As its first order of business, the Working Group will develop a rigorous work plan and principles, which will reflect a whole-of-government approach that addresses all Indigenous Peoples**.* (emphasis added)

From the Prime Minister's speech and announcements, it is clear Minister Wilson-Raybould has the lead on any changes to federal Indigenous policy and legislation for the Trudeau government. She is senior to INAC Minister (now Indigenous-Crown Relations) Carolyn Bennett.

Minister Wilson-Raybould is a member of key federal Cabinet Committees and Minister Bennett is not, such as the top Cabinet Committee on Agenda, Results and Communications.

L to R: Ed John, Shawn Atleo, Jody Wilson-Raybould all from BC First Nations Summit political culture.

"From the Prime Minister's speech and announcements, it is clear Minister Wilson-Raybould has the lead on any changes to federal Indigenous policy and legislation for the Trudeau government. She is senior to INAC Minister (now Indigenous-Crown Relations) Carolyn Bennett"

Husband & wife, Tim Raybould & Jody Wilson-Raybould developed "Governance Toolkit".

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Jody Wilson-Raybould, Minister of Justice & Attorney-General

"As her biography shows Minister of Justice & Attorney-General, Jody Wilson-Raybould's political career is based upon her collaboration with the federal termination plan by participating as a Commissioner on the BC Treaty extinguishment process, as a Director on the First Nations Lands Advisory Board and the First Nations Finance Authority"

Biography of Minister Jody Wilson-Raybould (Source: Liberal Party of Canada)

> *Jody is a former crown prosecutor, treaty commissioner and BCAFN regional chief. She has ten years of experience as an elected official, serving the needs of the many people she has represented. She has a strong reputation as a bridge builder between communities, and a champion of good governance and accountability.*
>
> *Jody was called to the Bar in 2000 and began working as a provincial crown prosecutor.* ***She later served as an advisor at the BC Treaty Commission****, a body that oversees complex treaty negotiations between First Nations and the Crown. In 2004,* ***Jody was elected as Commissioner by the Chiefs of the First Nations Summit****. She was elected Regional Chief of the Assembly of First Nations in 2009, where she devoted herself to the advancement of First Nations governance, fair access to land and resources, as well as improved education and individual health. She was re-elected as Regional Chief in 2012 and held this position until she stepped down in June 2015.*
>
> *She is an active volunteer in her community and has served as a Director for Capilano College, the Minerva Foundation for B.C. Women, the Nuyumbalees Cultural Centre, and the National Centre for First Nations Governance.* ***She is also a director on the First Nations Lands Advisory Board and Chair of the First Nations Finance Authority****.*
>
> *Jody has been married to Dr. Tim Raybould for almost seven years. He is a Cambridge scholar, and management consultant. She is a descendant of the Musgamagw Tsawataineuk and Laich-Kwil-Tach peoples, which are part of the Kwakwaka'wakw and also known as the Kwak'wala speaking peoples. She is a member of the We Wai Kai Nation.* [emphasis added]

As her biography shows Minister of Justice & Attorney-General, Jody Wilson-Raybould's political career is based upon her collaboration with the federal termination plan by participating as a Commissioner on the BC Treaty extinguishment process, as a Director on the First Nations Lands Advisory Board and the First Nations Finance Authority, the latter two being federally created institutions. Minister Bennett is now trying to spin these institutions as "Indigenous *institutions*".

L to R: Former PM, Jean Chretien & Jody Wilson-Raybould

I have no doubt that it was because of her track record of compromising Aboriginal Title and Rights that Prime Minister Justin Trudeau recruited Jody Wilson-Raybould in 2014, to be a star candidate for the Liberal Party of Canada.

Minister Wilson-Raybould will be the main Liberal salesperson selling the Trudeau government's Nation-to-Nation plan to implement UNDRIP as "*reconciliation*" when it is really re-colonization under Canada's racist, colonial constitutional framework of the federal and provincial orders of government and jurisdiction.

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Federal Pre-Conditions Remain at Termination Tables

The Trudeau government is still pushing the following federal pre-conditions at Termination Tables negotiating modern section 35 agreements and are reflected in the federal "*10 Principles*":

- Extinguishment (modification) of Aboriginal Title.
- Legal release of Crown liability for past violations of Aboriginal Title & Rights;
- Elimination of Indian Reserves by accepting lands as private property (fee simple);
- Removing on-reserve tax exemptions;
- Respect existing Private Lands/Third Party Interests (and therefore alienation of Aboriginal Title territory without compensation);
- Acceptance of existing federal & provincial laws;
- Program funding on a formula basis being linked to own source revenue (suspended for up to 3 years);

Also, the federal legal techniques for de-facto extinguishment of Aboriginal Title remain:

- certainty and finality;
- modified and released;
- Non-assertion of rights.

Since forming government the Liberals have pushed referendums on Agreements -in-Principle using the "*modified and released*" technique to extinguish the Aboriginal Title of the Northern Shuswap and the so-called "*Algonquins of Ontario*," a fictitious group created by the governments of Canada and Ontario to extinguish Algonquin Aboriginal Title in the Ottawa Valley, including the National Capital Region where the federal seat of government is located.

Using the AFN to Collaborate on Canada's Manipulation of UNDRIP

On June 12, 2017, Prime Minister Justin Trudeau and AFN National Chief Perry Bellegarde signed a **Memorandum of Understanding** (**MOU**) for a national political process on "*Joint Priorities*" thereby formalizing the framework for a national AFN-Canada process, which the AFN National Chief and apparently the majority of the Executive Committee of AFN, have been negotiating since the Liberals formed the government in 2015.

From sources I have, my understanding is that on June 1, 2017, during an AFN Executive Committee Meeting a majority of the AFN Executive Committee voted in favour of National Chief Bellegarde signing the MOU with Prime Minister Trudeau. However, my sources indicate that Ontario Regional Chief Isadore Day and Alberta Regional Chief Craig Makinaw opposed the signing of the MOU because they had concerns.

I believe all First Nation Peoples should be concerned about the top-down stealth approach of the Trudeau government regarding the Canada-AFN process, which

"Since forming government the Liberals have pushed referendums on Agreements-in-Principle using the "modified and released" technique to extinguish the Aboriginal Title of the Northern Shuswap and the so-called "Algonquins of Ontario," a fictitious group created by the governments of Canada and Ontario to extinguish Algonquin Aboriginal Title in the Ottawa Valley"

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is now apparently the political framework for local First Nations Chiefs input into the **AFN-Canada Fiscal Relations process**, the **Federal Ministerial Law and Policy Review**, and the other listed MOU "Joint Priorities".

AFN-Canada MOU on Joint Priorities:

The first point I want to make here is the list of "*Joint Priorities*" comes from the federal Liberal government's 2015 Indigenous Policy Platform, and the outcome of negotiations with the three National Indigenous Organizations (First Nations, Inuit & Metis), not community Chiefs or their First Nation citizens.

How the federal Liberal majority government interprets and implements its 2015 Indigenous Platform is likely different than how many First Nations interpret or understand these promises, such as the "*Nation to Nation*" relationship and "*Reconciliation*" process for example.

The fact is the AFN-Canada MOU formalizes a national top-down Liberal government political process, which the federal government controls and manages because it has an effective veto over process, agenda items, and funding.

Part IV. of the **AFN-Canada MOU on Joint Priorities** provides for Fiscal Resources:

> *To achieve the purposes of this MOU, Canada will:*
>
> *1. provide financial support to the AFN and to regional First Nation organizations to support full and meaningful engagement with First Nations, as rights holders, with respect to the objectives of this MOU; and [emphasis added]*
>
> *2. work with the AFN to examine additional needs to achieve full and meaningful engagement of First Nations, as rights-holders. [emphasis added]*

Clearly, while AFN and Regional Organizations are financially provided for in this **AFN-Canada MOU on Joint Priorities**, as far as I know none of the First Nation communities who are the legal "*rights holders*" have been approached about the "*Joint Priorities*" or offered funding for "*engagement*", particularly about Inherent, Aboriginal and Treaty Rights, which are matters that fall within the scope of the of the UNDRIP Articles/Minimum International Human Rights Standards.

So, in my view the AFN National Chief, the AFN Executive Committee, regional organizations and AFN Chiefs' Assemblies are participating in a federally-driven process through what the federal government calls a "*Cycle of Reconciliation*" through a "*Bilateral Mechanism*", which is an AFN-Cabinet Committee where the Prime Minister will meet the AFN National Chief annually and federal Ministers will meet AFN representatives at least twice a year.

In addition to the AFN-Cabinet Committee, on December 15, 2016, the federal government created a **National Council for Reconciliation**.

According to an AFN Update; at a December 15th meeting, on behalf of the federal government, Minister Carolyn Bennett announced:

> *a process to implement Calls to Action 53 to 56 that call for a National Council for Reconciliation (NCR) beginning with the appointment of six individuals to form an interim Board*

"How the federal Liberal majority government interprets and implements its 2015 Indigenous Platform is likely different than how many First Nations interpret or understand these promises, such as the "Nation to Nation" relationship and "Reconciliation" process for example"

Prime Minister Justin Trudeau with AFN Nat'l Chief Perry Bellegarde

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> *of Directors for the NCR;*
>
> *establishment of a reconciliation secretariat at INAC to support Canada's work;*
>
> *$10 million to support the National Centre for Truth and Reconciliation located at the University of Manitoba (Call to Action 78).*
>
> TRC recommendation 53 provides, in part:
>
> *with membership jointly appointed by the Government of Canada and national Aboriginal organizations, and consisting of Aboriginal and non-Aboriginal members.* [emphasis added]

This is a new federal institution to be created by legislation, and the Prime Minister named the former TRC Commissioners as members of an "*interim Board*", but the mandate of this new body gives some influence on federal policy and legislation to the NRC Board, so whoever else is appointed to the **National Council for Reconciliation** will also have some influence over federal Indigenous policy and legislation and therefore the "*Joint Priorities*" in the **AFN-Canada MOU**.

Looking at the federal appointment of the **Murdered and Missing Women & Girls Commissioners**, the NRC Board appointments may have ties to the Liberal Party of Canada and therefore be partisan, which may affect the independence of the new institution. Time will tell.

The **AFN-Canada MOU** national process also sets out how through the **AFN Charter** structure community Chiefs will "*work jointly*" with the federal **Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples**, announced on February 22, 2017.

The AFN-Canada MOU on Joint Priorities lists #6

> *work jointly [with Federal Land & Policy Review] to decolonize and align federal laws and policies with the **United Nation Declaration on the Rights of Indigenous Peoples** and First Nations' inherent and Treaty rights;*

This sounds good but not when you take Justice Minister Jody Wilson-Raybould's "*Canadian definition*" of UNDRIP into account in the process. She has said:

> *adopting the UNDRIP as being Canadian law are unworkable and, respectfully, a political distraction to undertaking the hard work required to actually implement it… **Ultimately, the UNDRIP will be articulated through the constitutional framework of section 35.**" [Source: JWR to AFN AGA July 12. 2016]* [emphasis added]

INAC Minister Carolyn Bennett has also described how the Trudeau government intends to implement UNDRIP, Minister Bennet said:

> *We intend nothing less than to adopt and implement the declaration **in accordance with the Canadian Constitu-***

"the mandate of this new body gives some influence on federal policy and legislation to the NRC Board, so whoever else is appointed to the National Council for Reconciliation will also have some influence over federal Indigenous policy and legislation and therefore the "Joint Priorities" in the AFN-Canada MOU"

L to R: TRC Chief Commissioner, Murray Sinclair & Prime Minister Justin Trudeau

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

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tion. [emphasis added]

By adopting and implementing the Declaration, we are excited that we are breathing life into Section 35 and recognizing it now as a full box of rights for Indigenous peoples in Canada. Canada believes that our constitutional obligations serve to fulfil all of the principles of the declaration, including "free, prior and informed consent." ***We see modern treaties and self-government agreements as the ultimate expression of free, prior and informed consent among partners****. [Source: Carolyn Bennett to UNPFII May 10, 2016]* [emphasis added]

"Trudeau is just maintaining the 0.2% Indian Act on-reserve dependency economy while ignoring the restoration of sufficient lands, territories and resources necessary for the social, economic and cultural viability and survival of First Nations"

First Nation Peoples should make themselves aware that the current federal land claims (Comprehensive & Specific) policy and Self-Government policies are based on denial and extinguishment NOT recognition and affirmation of Aboriginal and Treaty rights and are inconsistent with a fair interpretation of section 35 of the Canadian constitution and Articles 26, 27, 28 of UNDRIP.

Conclusion

My observations of the Trudeau government's two years in office with his top-down secret processes, his racist, colonial "*10 Principles*" for Indigenous Relationships and his announcement that he's splitting of the Department of Indian Affairs and Northern Development (DIAND) into two departments – **Indigenous Services** and **Crown-Indigenous Relations –** brings me to one conclusion. As I've seen happen before with the Liberal "Inherent Right" Policy, the Liberal "*Nation-to-Nation*" renewed relationship will have a policy and legislative meaning of "*recognition*" that is based upon a Liberal definition of "*reconciliation*" but re-colonizes First Nations through Canada's racist, colonial constitutional framework and Termination Policies. It will be sold to Indigenous Peoples and the public as implementing UNDRIP and international human rights obligations.

As my friend the late Art Manuel would say—Trudeau is just maintaining the 0.2% **Indian Act** on-reserve dependency economy while ignoring the restoration of sufficient lands, territories and resources necessary for the social, economic and cultural viability and survival of First Nations.

Self-Government without a sufficient land base is a cruel joke!

INAC Minister Carolyn Bennett at Standing Committee on Aboriginal Affairs.

PM Trudeau and AFN Nat'l Chief Bellegarde Signing MOU, June 12 , 2017

In Canada, White Supremacy is the Law of the Land

Arthur Manuel at Standing Rock. He visited the camp twice in 2016. His daughter and several grandchildren lived at the camp for three months.

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In this excerpt from his recently-released book, the late Indigenous activist Arthur Manuel writes about how the BNA Act that created Canada set the young country on the path to a "race-based democracy"

By Arthur Manuel

Indigenous leader and activist Arthur Manuel died unexpectedly earlier this year just as he was wrapping up work on his recently released book, The Reconciliation Manifesto, Recovering The Land, Rebuilding The Economy (with co-author Grand Chief Ronald Derrickson). Naomi Klein, who delivered the eulogy at Manuel's funeral at Adams Lake Indian Band Community Centre on January 15, 2017 (and also contributed the preface to Manuel's book), praises Manuel as a formidable activist and brilliant teacher. In this excerpt, Manuel writes about how the BNA Act that created Canada set the young country on the path to a "race-based democracy."

Canada, as a society, is still in denial about its historical and current colonialism when it comes to Indigenous peoples, and how the country is still largely based on the white supremacism of its founding document, the British North America (BNA) Act. Colonialism is not a "behaviour" that can be superficially changed by a prime minister professing "sunny ways." It is the foundational system in Canada.

Canada was created by an Act of British parliament in 1867. It was more a corporate reorganization, a hurried consolidation of debts, than the birth of a nation. The problem was that they were using the theft of our lands, tucked into what, for them, was this innocuous-sounding Section 91.24 of the BNA Act to cover their debts.

This was where Britain, the colonial power, gave the young successor state exclusive control of our lands and peoples. In the infamous Section 91 of the BNA Act, which sets out the long list of federal responsibilities, Subsection 24 lists "Indians and land reserved for Indians." That's it. That's where the whole ugly weight of colonialism is compressed, the black hole that devoured our land and liberty, where the Canadian state claims the privilege of exercising 100 per cent control over Aboriginal and treaty land and Indigenous peoples. It is where the Canadian state fulfilled Pope Nicholas V's exhortation in a more modern setting to "vanquish and subdue all Saracens and pagans" and confiscate "all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery."

Fathers of Canadian Colonization-1867

"Canada, as a society, is still in denial about its historical and current colonialism when it comes to Indigenous peoples, and how the country is still largely based on the white supremacism of its founding document, the British North America (BNA) Act. Colonialism is not a "behaviour" that can be superficially changed by a prime minister professing "sunny ways." It is the foundational system in Canada"

Arthur Manuel (Left) at a UN CERD Meeting in Geneva, 2015.

"Everywhere they imposed the colonial reserve system and Indian Act dominance to exercise their dominion over us. Dispossession was the goal and dispossession was complete. Canada was and remains a thoroughly colonial country, built on the dominance of one race over another for the purpose of seizing and occupying their land"

Treaties 1-11 in Canada.

'White Supremacy' continued from page 13

It is where it is most clear that the BNA Act was a white supremacist document designed for a white supremacist country. I know, calling Canada a white supremacist country sounds controversial to some, but it shouldn't. Blacks and Asians were systematically excluded from Canada until well after the Second World War and the few allowed in were here for very specific reasons – cheap and expendable labour to build the transcontinental railway in the case of the Chinese and as domestics or railway porters in the case of Blacks.

The overwhelming number of jobs were simply refused them and the numbers of what are now called visible minorities were kept, by strict immigration rules, to less than 1 per cent of the total and very intentionally white population. For Indigenous peoples, the goal was to manage us into what was thought our inevitable extinction while their towns were kept clear of us by Jim Crow laws and practices that were in effect across the country, in some places well into the 1960s.

But the real focus of Canadian racism at its founding was usurping Indigenous peoples. Less than 10 years after Canada was formed with the merger of Ontario, Quebec, New Brunswick and Nova Scotia, the young state adopted the Indian Act, the most colonial piece of legislation imaginable for dominating and controlling every aspect of the lives of the "subject nations" within its territories.

Our peoples were to be administrated by bureaucrats in the Indian Affairs branch, generally headed by a military man. Less than 10 years after the Indian Act was passed, the Canadian successor state was sending troops to the West to attack our peoples and seize our lands, if necessary to starve us into submission, as part of the sea unto sea mission of this new aggressive imperialist state. **The very fact that the Indian Act is very much in force today, 150 years after Confederation, is an indication of just how deeply this colonial ideology is imbedded in the Canadian psyche, as well as into its legal framework.** The two are inextricable and they will be until Canada comes to terms with its past and sits down with Indigenous peoples to define a new future together.

By the time the forces of Anglo-Canadian imperialism were ready to move into British Columbia in the early 1800s, Canadians were so certain that they had broken our people that they did not even bother with formal treaties. They simply pushed us aside and when groups like the Tsilhqot'in resisted, they lured their leaders out of their camps and executed them.

Everywhere they imposed the colonial reserve system and Indian Act dominance to exercise their dominion over us. Dispossession was the goal and dispossession was complete. Canada was and remains a thoroughly colonial country, built on the dominance of one race over another for the purpose of seizing and occupying their land.

In some places, like British Columbia, Canada began as an apartheid state. I know even the most sympathetic Canadian is raising their eyebrows when I compare Canada to the former apartheid state in South Africa. But in fact, the first act of the new Crown colony in British Columbia in 1872 was to pass a bill forbidding Indigenous peoples from voting. The reason? At the time, Indigenous peoples outnumbered the non-Indigenous population by four to one in the province as a whole, and 15 to one in places like the north coast. This was to be a race-based democracy and racism would be the main, and quite explicit, guide to govern-

'White Supremacy' conclusion from page 14

ance until the whites greatly outnumbered the Indigenous peoples. It is as if the South Africans had managed to make apartheid unnecessary by swamping the Blacks by white immigration. That is exactly what the white society in British Columbia did and, at different times and in different ways, what all of Canada did. The underlying apartheid is still there. And that is why I say that Canada will remain a racist society until it comes to honourable terms with the Indigenous peoples of the land. This is what has to be fixed in Canada.

The phrase in the British North America Act, "Indians and land reserved for Indians," gave the new Canadian government complete power over our lands and peoples.

In these words, Canadians see only a bureaucratic line in their British-made Constitution. But to understand what you have done, I ask you to substitute the names of other peoples. **Would you not be outraged by a founding state document that asserted the government's absolute control and domination of "Jews and land reserved for Jews" or of "Negroes and land reserved for Negroes," when it is was also clearly stated that Jews and Blacks were not considered "persons" under the law and had no democratic rights within the society?** That they were excluded from citizenship and were refused even the right to vote?

Contained within this Constitution were Canada's equivalent of the 1935 Nuremberg laws, Canada's equivalent of Jim Crow in the American South. That is how serious our fight is against the white supremacy packed into section 91.24 of Canada's founding document.

You cannot simply reform your racist state by enacting a few more programs and delivering a few more services. It is embedded in the very nature of Canada and requires a completely new deal. But first, to truly understand where we have landed today, we have to continue retracing a bit further along the sad road that brought us to this place.

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INAC Minister Bennett at UNPFII, May 10, 2016.

"The phrase in the British North America Act, "Indians and land reserved for Indians," gave the new Canadian government complete power over our lands and peoples"

Alta, Norway with Arthur Manuel, myself and two Sami ladies, June 6, 2013..

Arthur Manuel – A Legal Warrior and the Nelson Mandela of the Indigenous Movement

By Russell Diabo

Art Manuel was an Indigenous leader, who like his father George Manuel, before him had become known internationally for his tireless efforts to have the rights of Indigenous Peoples recognized and respected at the highest levels of the United Nations and its member states, especially in Canada.

Art Manuel focused on the return of land as the most important issue for Indigenous Peoples if they were to become once again self-determining and economically viable. He cited the fact that all of the Indian Reserves in Canada amount to 0.2% of the land mass, meaning the federal and provincial governments control 99.8% of the land in Canada. This profound injustice, he said, was kept in place by Canadian colonialism, which consisted of three parts: dispossession, dependency and oppression.

"During my life, I have met many Indigenous leaders from North America and internationally and I can honestly say Art stood out as a leader with honesty, integrity, kindness and humour like few I have known. He was my close friend and brother"

During my life, I have met many Indigenous leaders from North America and internationally and I can honestly say Art stood out as a leader with honesty, integrity, kindness and humour like few I have known. He was my close friend and brother.

Unfortunately, we lost Art Manuel way too soon, as the Creator called him home on January 11, 2017. Art's family and all of us who worked closely with Art Manuel have since been trying to recover from the grief due to his unanticipated passing. Indeed, Indigenous Peoples globally have experienced a serious loss with Art Manuel's sudden passing.

I first met Arthur Manuel in the mid-1980's during the constitutional talks called the **First Ministers' Conferences on Aboriginal Matters**. These talks were intended to identify and define the meaning of section 35 Aboriginal and Treaty rights in the then new **Constitution Act 1982**, which provides "*the existing aboriginal and treaty rights of Aboriginal peoples are hereby recognized and affirmed*".

At the time, I was working with Art's brother, Bob Manuel, at the Assembly of First Nations in a political unit called the "*Bilateral Commission*". This unit was created by Chiefs across Canada from both historic Treaty and Aboriginal Title territories who were concerned about the involvement of the provincial governments in the constitutional talks of the 1980's.

Arthur Manuel in Alta, Norway, June 2013.

The **AFN Bilateral Commission** was created after the adoption of the new constitution in 1982 and it was mandated to assess the impacts of the new constitutional process that was intended to identify and define what rights would be explicitly protected in the new constitution.

The government process would involve four meetings between the federal and provincial governments and the four main Indigenous organizations and the Chiefs had serious concerns about involving the provinces in the historic "*bilateral relationship*" between the Crown and First Nations. In contrast, there were other Chiefs who embraced participation in the constitutional talks and AFN created a **Constitutional Working-Group**, which was well-funded by the federal government of Pierre Elliot Trudeau to participate in the process. This resulted in two groups operating within AFN and deep divisions between them about how to proceed now that the new constitution was law.

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My work at AFN's Bilateral Commission in 1984-85 was to try to protect Aboriginal and Treaty rights from provincial governments and it was the start of my working with and becoming friends with Art and, in fact, the whole Manuel family.

Just before the final Conference on Aboriginal Matters held on March 26-27, 1987, Art Manuel handed me a document he had written on his personal computer—Art was one of the few people I knew who owned a personal computer at the time—and the document had "*For Indian Eyes Only*" typed at the top. It was titled "*Strategic Planning and Defence Analysis – Situation Report and Recommendations Respecting First Ministers' Conference 1987*".

Art's analysis was brilliant and in retrospect prescient. It is worth quoting at length. He concluded:

> *At the 1987 First Minister's Conference the Federal government wants to try for an instant replay of this game of -- nows you see it and nows you don't -- this time in respect to Indian self-government.*
>
> *The federal government will say they recognize and affirm Indian Self-government and then entrench some legal sounding words that will, on the surface, satisfy the media and international opinion that Indian government has been recognized in the Canadian Constitution.*
>
> *However, after the First Ministers Conference, Canadian and provincial government bureaucrats will take the legal position that any Constitutional reference regarding Indian self-government is just another "empty box".*
>
> *Furthermore, it is clear that once Indian self-government is entrenched as an "empty box" the Federal government could rely on this Constitutional mandate to force "all" Indian bands to accept the municipal model as self-government.*
>
> *The Federal government could achieve this by using its superior fiscal and legislative strength to fill the empty box with municipal type legislation. And then justify this manipulation of Indian governments by taking refuge under a federal system that did not clearly recognize Indian governments as distinct orders of constitutional government…*
>
> *If, this Federal government strategy is successful Indian people will be on the road to termination as distinct Peoples.*

In fact, in 1995, this is exactly what the federal Liberal government of Jean Chretien (who was the federal Justice Minister who negotiated what became Canada's now constitution) unilaterally did when it adopted the so-called "*Inherent Right*" Aboriginal Self-Government Policy, which clearly states:

> ***The Government of Canada recognizes the inherent***

When I was with Art Manuel at a Sun Peaks Expansion Protest, circa 2001.

"My work at AFN's Bilateral Commission in 1984-85 was to try to protect Aboriginal and Treaty rights from provincial governments and it was the start of my working with and becoming friends with Art and, in fact, the whole Manuel family"

L to R: Chretien, Trudeau, Maceachen at FMC 1983.

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> ***right of self-government as an existing Aboriginal right under section 35 of the Constitution Act, 1982.*** *It recognizes…**Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution.** Aboriginal jurisdictions and authorities should, therefore, work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws which is indispensable to the proper functioning of the federation…**The inherent right of self-government does not include a right of sovereignty in the international law sense**.* [emphasis added]

"As Art predicted, hundreds of Indian bands are negotiating under this federal municipalization policy largely because they can't afford to go to court and negotiations are federally funded"

As Art predicted, hundreds of Indian bands are negotiating under this federal municipalization policy largely because they can't afford to go to court and negotiations are federally funded.

This federal self-government municipalization policy was just reinforced on July 14, 2017, when Justice Minister Jody Wilson-Raybould unilaterally issued 10 principles on the federal relationship with Indigenous Peoples intended to guide a federal law and policy review currently underway.

It was in 1996-97, when Art Manuel and I began working together again politically. Art had just been elected Chief of the Neskonlith Indian band in B.C. and I was working at AFN once again as the **Indian Act Amendments Coordinator** for National Chief Ovide Mercredi.

At AFN we did an analysis of the proposed **Indian Act** amendments being advanced by the Liberal government of Jean Chretien, a long time nemesis of the Manuel family in particular, and First Nations in general, and our conclusion was the proposed legislative amendments were worse than the status quo. We presented our findings to AFN Chiefs' Assemblies and they agreed with our conclusions. Chief Art Manuel was one of the lead Chiefs involved in helping us fight against Chretien's regressive Bill to change the **Indian Act**. The Bill was called the "*Indian Act Optional Modification Act*". It died on the order paper when Chretien called a federal election.


Canada
Indigenous and Northern Affairs Canada

The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government

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- Part I - Policy Framework
  - Inherent Right of Self-Government is a Section 35 Right
  - Within the Canadian Constitutional Framework

It was in July 1997, Phil Fontaine was elected AFN National Chief, by September 1997, Phil Fontaine told me my services were no longer needed at AFN and I had accepted a position in B.C. as Research Director, for a Traditional Use Study being conducted by the Neskonlith Indian Band and the Adams Lake Indian Band.

In September 1997, my wife and I moved to Sorrento, B.C. and for the next four and a half years I would work closely with Chief Art Manuel, first as a **Traditional Use Study Research Director** for the two Secwepmec Bands (1997-1999) then as an **Executive Liaison** (2000-2001) between the **Interior Alliance of Indigenous Nations** from south, central B.C. and the **Union of B.C. Indian Chiefs**. The main objective of the **Interior Alliance** while Art Manuel was spokesperson was developing an alternative to the **B.C. Treaty Commission** (**BCTC**) process to negotiate Comprehensive Claims & Self-Government Final Agreements. The **Interior**

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Alliance didn't agree with the federal negotiation policies. The Comprehensive Claims Policy leads to extinguishment of Aboriginal Title and the Self-Government policy leads to conversion of Indian Bands into municipal type governments.

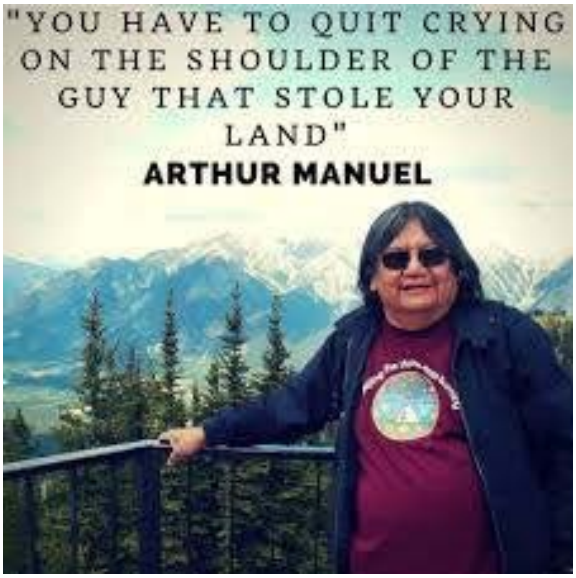
It was in December 1997, the Supreme Court of Canada handed down the historic ***Delgamuukw*** decision recognizing Aboriginal Title in Canada. As Chief and Tribal Chairman, Art Manuel immediately seized on the SCC ***Delgamuukw*** decision and succeeded in getting the AFN to establish a **Delgamuukw Strategic Implementation Committee** (**DISC**) with a mandate to press the federal government into changing the **Comprehensive Claims Policy** (**CCP**) to conform with the legal principles set out in the SCC ***Delgamuukw*** decision. In the end, the federal government refused to change its **CCP**, which is based upon denial and extinguishment of Aboriginal Title.

Art Manuel equated the federal policy of extinguishment of Aboriginal Title to the practice of slavery and he showed how they both had the same historical roots. This was Art Manuel's, life-long quest, to get Canada to recognize NOT extinguish Aboriginal Title. Unfortunately, Art did not live to see the Policy changed to recognize and affirm Aboriginal Title.

Art Manuel's children, family, friends and supporters are picking up his work to "*get the land back*" as Art Manuel would say. It now takes many people to do the advocacy work Art Manuel was doing single-handedly—without pay—since Art Manuel mostly worked as a volunteer since he left public office years ago.

Thankfully, he has left his experience and vision behind in his two books ***Unsettling Canada: A National Wake-Up Call*** and ***The Reconciliation Manifesto: Recovering the Land, Rebuilding the Economy***, his new book that is being published posthumously by Lorimer and is available now.

[A shorter version of this article was printed by NOW Magazine on October 26, 2017]



Me with Many of the Manuel Family in Vancouver, October 8, 2017.

"Art Manuel's children, family, friends and supporters are picking up his work to "get the land back" as Art Manuel would say. It now takes many people to do the advocacy work Art Manuel was doing single-handedly—without pay—since Art Manuel mostly worked as a volunteer since he left public office years ago"

Manuel Family Meeting Discussing Promotion of Art's new book: "Reconciliation Manifesto"

Joint Recommendations by the Indigenous Nations Appearing Before the Committee for the Elimination of Racial Discrimination—August 13, 2017

Key Issues: Indigenous Territories, Colonial Doctrines and the myth of Underlying Crown Title

1. Indigenous Nations have since the beginning of time lived and will continue to live on our Great Turtle Island (North America) forever. We are free and independent nations with our own governance and laws.

2. We, as Indigenous Peoples, have a birthright and responsibilities for all of Creation. We are the land, without the land, people are dying. We have a spiritual connection to the land and water and our way of life, our culture, our languages are rooted in the land. Water is not a resource but a spirit Creator has gifted us. It's a gift for life. Canada continues to deny us our birthright and our responsibility.

3. Canada is a settler colonial state, the assertion of sovereignty by the British Crown remains based on the colonial doctrines of discovery, which have been rejected by the International Court of Justice and various UN human rights bodies as violating international law; and as racist. Canada's claim to sovereignty and underlying title is based on the doctrines of discovery as enshrined in the *Inter Caetera and related Papal* Bulls**1**, which have to be repealed. This has been confirmed by CERD when they called on the Holy See to engage in a meaningful dialogue with Indigenous Peoples on the issue.

4. The settler colonial state of Canada remains based on these racist colonial doctrines, celebrating 150 years of colonialism denying our inherent ancestral rights over our territories, lands, waters and resources. The British North America Act, now the Constitution Act 1867, was unilaterally passed by British parliament and enshrines these colonial systems and structures. CERD already recommended to the United Kingdom to ensure that the principles and provisions of the Convention are directly and fully applicable, in Crown dependencies**2**.

5. 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 in May 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 qualifying that: "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.

6. The International Court of Justice in its Advisory Opinion on Reservations to the Genocide Convention**3** rejected the position of state parties that state parties had unfettered authority to make reservations by virtue of their sovereignty. The court did not share this view and held, "It is obvious that so extreme an application of the idea of state sovereignty could lead to a complete disregard of the object and purpose of the Convention."**4** The same

"Canada is a settler colonial state, the assertion of sovereignty by the British Crown remains based on the colonial doctrines of discovery, which have been rejected by the International Court of Justice and various UN human rights bodies as violating international law"

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has to be true for ICERD and Canada's obligations under it.

7. In 2012, Canada was asked by CERD to produce a document or documents to show that Canada had underlying title to the lands and resources of the Indigenous Nations which are presently in the state of Canada. No Peace and Friendship Treaties or any other document ever gave title to the British Crown**5**. Indigenous Nations across Canada maintain their inherent land rights and underlying title to the land.

8. In Canada's report to CERD and the recently released 10 principles on Indigenous relationships, Canada relies on the colonial doctrines of discovery, claiming that they obtained underlying title to the land at the declaration of British Crown sovereignty. The Canadian state's development and implementation of its racist construct of our territories and resources vesting in the Crown is a continuation of racism and racial discrimination against our Nations leading to a denial of our rights in our territories.

9. On top of Canada's implementation of the wrongful and unjustifiable assumption of underlying Crown title, Canada and the provinces have issued faulty proprietary interests, which are destroying our nations, our lands, our water by using Indigenous Peoples' lands, waters and resources without Indigenous Peoples' free, prior and informed consent.

10. Indigenous Peoples' free, prior and informed consent has a jurisdictional dimension and recognizes Indigenous Peoples as decision-makers regarding access to our lands and resources, which is constantly undermined by Canada and the provinces claiming to be final decision-makers. The settler colonial state of Canada says that we do not have a right to say no to projects on our lands, this constitutes a further violation of our internationally protected Indigenous rights. We have a right of self-determination, and Indigenous free, prior and informed consent to access to our lands and any allocation decisions is required.

11. The settler colonial state of Canada maintains its "Comprehensive Claims Policy" on land rights, to push for final termination agreements that will result in the de facto extinguishment of our Title. This is a racially discriminatory policy against indigenous proprietary interests. In addition, the loan funding for negotiations under the policy, including the so-called British Columbia Treaty Process and the Algonquins of Ontario Process, has funded negotiations with groups who are not the proper Title and Rights holder, employed divide and rule strategies, including against the Lubicon Cree, resulting in overlapping claims and other ways to undermine our collectively held Title to our land.

12. First established in 1973, the specific claims process has been plagued by institutionalized conflict of interest: Canada adjudicates all claims against itself, perpetuating the inequalities and injustices.

13. In 1995, the Canadian federal Liberal government announced and continues to maintain its "Approach to Implementation of the Inherent Right and the negotiation of Aboriginal Self-Government". The title of the policy is a misnomer and disingenuous, because it is not based on an indigenous in-

"On top of Canada's implementation of the wrongful and unjustifiable assumption of underlying Crown title, Canada and the provinces have issued faulty proprietary interests, which are destroying our nations, our lands, our water by using Indigenous Peoples' lands, waters and resources without Indigenous Peoples' free, prior and informed consent"

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Coffee with CERD Members, August 14, 2017.

herent right, but rather on delegated authority with many exemptions, such as matters involving trade and commerce, national powers etc. The policy states that it does not include a right of sovereignty in the international law sense, it also does not recognize nor implement the indigenous right to self-determination.

14. Environmentally destructive development of our territories, including mines, tar sands, oil and gas and pipelines are examples of acts by Canada and the provinces to continue the dispossession and exploitation of indigenous lands and resources without Indigenous Peoples' free, prior and informed consent. It also violates Indigenous laws, requiring Indigenous Peoples to take action to protect their lands, often resulting in criminalization under settler colonial law. In 2016 the Trudeau government unilaterally approved the expansion of the Trans Mountain Pipeline without Indigenous free prior and informed consent. It would lead to a tripling of capacity and increased tar sands extraction, already the largest single green house gas emitter in the world. Indigenous land and water defenders are at the forefront of opposing these destructive projects, and the Trudeau government has already indicated that they would use executive force, including the Royal Canadian Mounted Police and the army, to push these projects through. This puts the police force into a compromised political position where they become adversaries and Indigenous Peoples do not trust them, when they would be needed to investigate serious criminal issues like missing and murdered indigenous women. The criminalization of water and land defenders constitutes a human and indigenous rights violation which has to cease.

"For Canada to comply with CERD's rejection of the colonial doctrines of discovery as a racist basis for the claim to sovereignty, jurisdiction and title"

Recommendations:

1. For Canada to comply with CERD's rejection**6** of the colonial doctrines of discovery as a racist basis for the claim to sovereignty, jurisdiction and title.
2. For CERD to request that the Independent Expert on the Promotion of a Democratic and Equitable International Order conduct a special study with the direct involvement of the Indigenous Nations regarding the underlying title to Indigenous Territories colonized by settler colonial states on the basis of the doctrine of discovery, where Crown assumes underlying title. To analyze the impacts of these doctrines based in colonialism on the Indigenous Territories and on Indigenous Peoples and to recommend solutions for recognizing underlying Indigenous title and to eliminate racial discrimination in all its forms.
3. For CERD to condemn Canada for promoting and developing laws and policies based on colonial doctrines behind closed doors, in a non-transparent manner without the full involvement and the free, prior and informed consent of the Indigenous Nations as the proper Title and Rights holders.
4. For CERD to hold Canada accountable to implement General Recommendation No. 23 requiring States Parties to ensure that Indigenous peoples are full decision-makers regarding issues relating directly to Indigenous peoples and that such decisions are not taken without their informed consent

Members of Interior Alliance Delegation at CERD Meeting in Geneva, August 14, 2017.

'Recommendations to CERD' continued from page 22

with specific reference to land and resource rights.

5. For CERD to hold Canada accountable and require Canada to ensure the free prior and informed consent of Indigenous Peoples with regard to development and resource exploitation within their traditional lands and territories; and ensure restitution where decisions have already been taken without the prior and informed consent of all affected Indigenous Peoples.

6. For CERD to hold Canada accountable for its failure to implement its previous concluding observations rejecting Canada's Comprehensive Claims Policy aiming at the de facto extinguishment of Indigenous Title, as a racially discriminatory policy against Indigenous Peoples and their proprietary interests.

7. For CERD to facilitate a dialogue and recommend an international facilitator to manage discussions with the Indigenous Nations, in relation to lands and other matters concerning underlying indigenous title to the land and the issue of Free, Prior and Informed consent as it relates to Indigenous Nations and Peoples.

8. For CERD to reject "Canada's Policy Approach to Implementation of the Inherent Right and the negotiation of Aboriginal Self-Government (1995)", as violating the indigenous right of self-determination.

9. For CERD to request that the settler colonial state of Canada provide a report on its efforts to reform the laws, policies and programs that aim at the de facto extinguishment of title to lands and the issue of self-government agreements as a means to resolve outstanding issues related to lands and resources.

10. For CERD to make an official request to send one or more of its members to Canada in order to facilitate the implementation of international standards regarding the situation as described in these submissions of Indigenous Nations and to ensure implementation of its concluding observations.

11. To request the CERD Secretariat to collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions and non-governmental organizations on the situation as described in these submission and more specifically to appoint and direct CERD members to investigate and collect information regarding the allegations contained in these submission and to report back to UN Committee on the Elimination of Racial Discrimination with recommendations; including follow-up on early warning and urgent action submissions in regard to the BC treaty process, the Algonquins of Ontario Process, and the Lubicon Cree, and the failure to engage with the proper title and rights holders.

12. ICERD Article 5 (d)(1) guarantees the right of peaceful assembly within our territories. When Indigenous Nations are protecting our territories, the racist state of Canada interferes with our indigenous rights in relationship to our territories. Indigenous Peoples' free, prior and informed consent is denied when the state asserts rights in our territories by criminalizing Indigenous and water defenders be protected which denies Indigenous Peoples

Government of Canada Delegation at CERD Meeting in Geeva August 14, 2017

"For CERD to hold Canada accountable for its failure to implement its previous concluding observations rejecting Canada's Comprehensive Claims Policy aiming at the de facto extinguishment of Indigenous Title, as a racially discriminatory policy against Indigenous Peoples and their proprietary interests"

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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.

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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/

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right to peaceful assembly. CERD requests Canada to respect all the articles of the Convention especially as it relates to the rights of Indigenous Peoples.

Endnotes

1 CERD (2016) Concluding Observations, Holy See, January 11, 2016

2 CERD (2016) Concluding Observations, United Kingdom, August 26, 2016

3 Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, starting at p. 15., on p. 24

4 Ibid.

5 Miguel Alfonso Martinez, (Special Rapporteur), Final Report: Human Rights of Indigenous People Study on Treaties, agreements and other constructive arrangements between States and Indigenous populations, UN Commission on Human Rights, 1999, E/CN.4/Sub 2/1999/20 (1999) UN CERD, 2002, A/57/18, paragraphs 303 and 331; Concluding Observations of the Committee on Economic Social and Cultural Rights UN CESCR, 1998, UN Doc. E/C.12/1Add.31, para. 18; Concluding Observations of the Committee of the Rights of the Child, UN CRC, 2003, CRC/C/15/Add.215, para 59

6 UN CERD, 2002, A/57/18, paragraphs 303 and 331; Concluding Observations of the Committee on Economic Social and Cultural Rights UN CESCR, 1998, UN Doc. E/C.12/1Add.31, para. 18; Concluding Observations of the Committee of the Rights of the Child, UN CRC, 2003, CRC/C/15/Add.215, para 59