

# From the 1969 White Paper on Indian Policy to Today's White Paper 2.0

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## The Federal Bureaucracy's 50 Year Plan

TRUTH BEFORE RECONCILIATION CAMPAIGN 2020

PRESENTATION BY RUSS DIABO

MAY 2020



# Chrétien & Trudeau Legacy





# 1969 White Paper Goals: Publicly Withdrawn - Secretly Implemented

- Eliminate Indian Status.
- Dissolve the Department of Indian Affairs within 5 years.
- Abolish the Indian Act & remove section 91.24 referring to “Indians and Lands Reserved for Indians”.
- Convert reserve land to private property that can be sold by the band or its members.
- Transfer responsibility for Indian Affairs from the federal government to the province and integrate these services into those provided to other Canadian citizens.
- Provide funding for economic development.
- Appoint a commissioner to address outstanding land claims and gradually terminate existing Treaties.

# 1969 WHITE PAPER ON INDIAN POLICY

## Publicly Withdrawn – Secretly Implemented

- ▶ In the face of the fierce opposition **the government publicly withdrew the White Paper in 1971**. However, internal correspondence from within the Department of Indian Affairs shows the 1969 federal Termination Plan has remained the federal objective.
- ▶ As DIA Assistant Deputy Minister (Indian Consultation and Negotiation) David A. Munro, wrote in a 1970 letter to the DIA Deputy Minister, not to abandon the White Paper Plan but to change tactics:  
*"We need not change the policy content, but we should put varying degrees of emphasis on its several components and we should try to **discuss it in terms of its components rather than as a whole**. [emphasis added]"*
- ▶ This was followed by a 1971 letter from the Minister of Indian Affairs, Jean Chretien to Prime Minister Pierre Trudeau confirming continuation of the White Paper Plan:  
*...we are deliberately furthering an evolutionary process of provincial and Indian inter-involvement by promoting contacts at every opportunity at all levels of government, at the same time recognizing the truth of the matter – that progress will take place in different areas in different ways at a different pace. Experience shows that the reference of a time frame in the policy paper of 1969 was one of the prime targets of those who voiced the Indian opposition to the proposals. The course upon which we are now embarked seems to present a more promising approach to the long-term objectives than might be obtained by setting specific deadlines for relinquishing federal administration. [emphasis added]"*

# Chretien & Trudeau Legacy Continues With Bennett and Trudeau Today





# December 15, 2016 - Trudeau Announces Two Track Pan-Indigenous “Reconciliation” Approach With 3 National Indigenous Leaders



# Trudeau's Two-Track Termination Plan

## Section 91.24

Use Federal Racist, Colonial, Authority & Control over **"Indians & Lands Reserved for Indians"** to Dissolve Dept. of Indian Affairs & Create 2 New Dept's.

## Section 35

To Impose a "New Relationship" Through a Unilateral Federal Definition & Interpretation of "Recognition" of **"Existing Aboriginal & Treaty Rights"**

## TWO-TRACK TERMINATION APPROACH TO INDIGENOUS POLICY (FIRST NATIONS, METIS, INUIT) AND COERCING A “NEW” RELATIONSHIP

- ▶ 1) **closing the socioeconomic gap** between Indigenous Peoples and non-Indigenous Canadians (**Indigenous Services Canada**), and
- ▶ 2) **making foundational changes to laws, policies and operational practices** based on the federal recognition [definition] of rights to advance [federal interpretation of] self-determination and self-government. (**Crown-Indigenous Relations**)



# White Paper 2.0 = Federal Weaponization of “Recognition” of Rights

- ▶ **Dissolve Department of Indian Affairs** & Create 2 New Departments for Pan-Indigenous Assimilation: 1) One for Indian Act Bands, Metis & Inuit (**Indigenous Services Department**) until Financially Forced to sign onto Modern Termination Agreements, & 2) One for compromised 4<sup>th</sup> Level “Indigenous Governments” (First Nations, Metis, Inuit) who have already signed or may sign Modern Termination Agreements (**Crown-Indigenous Relations Department**).
- ▶ **Eliminate Existing Legal & Political Distinctions and Status** by Financially Coercing Indian Act Bands from Original Indigenous Nations to sign onto Modern Termination Agreements Creating a “New Relationship” joining the Canadian Federation as 4<sup>th</sup> Level Ethnic Minorities (Indigenous-Canadians), lower in status than the federal, provincial, & Municipal Governments.
- ▶ **Impose 10 Federal Principles In Negotiations to Recolonize** the Original Indigenous Nations, Band-by-Band, through Imposed Pre-Conditions to Negotiations in federal Policy & Law.
- ▶ **Impose 2 New Fiscal Relations Policies:** 1) One for Indian Act Bands (New Comprehensive Funding Agreements), & 2) One for Federally “Recognized” 4<sup>th</sup> Level “Self-Governing First Nations” (New Self-Government Fiscal Policy based on “Own Source Revenue” meaning Taxation).

# 3 Federal Options to Transfer From Indian Act to be Re-Colonized as 4<sup>th</sup> Level Ethnic Gov't's

## "Modern Treaties"

- These are a new category of "Treaties" created by a 1983 Amendment to Canada's **Constitution Act 1982** & Federal Comprehensive Land Claims Policy. They are really *Comprehensive Land Claims Final Settlement Agreements* that lead to de facto Extinguishment of Aboriginal Title
- Meanwhile, historic Treaties are not implemented, except under Canada's Self-Gov't Policy & Agreements.
- Remaining "Comprehensive Land Claims" are located mainly in BC, Quebec & Atlantic Regions.

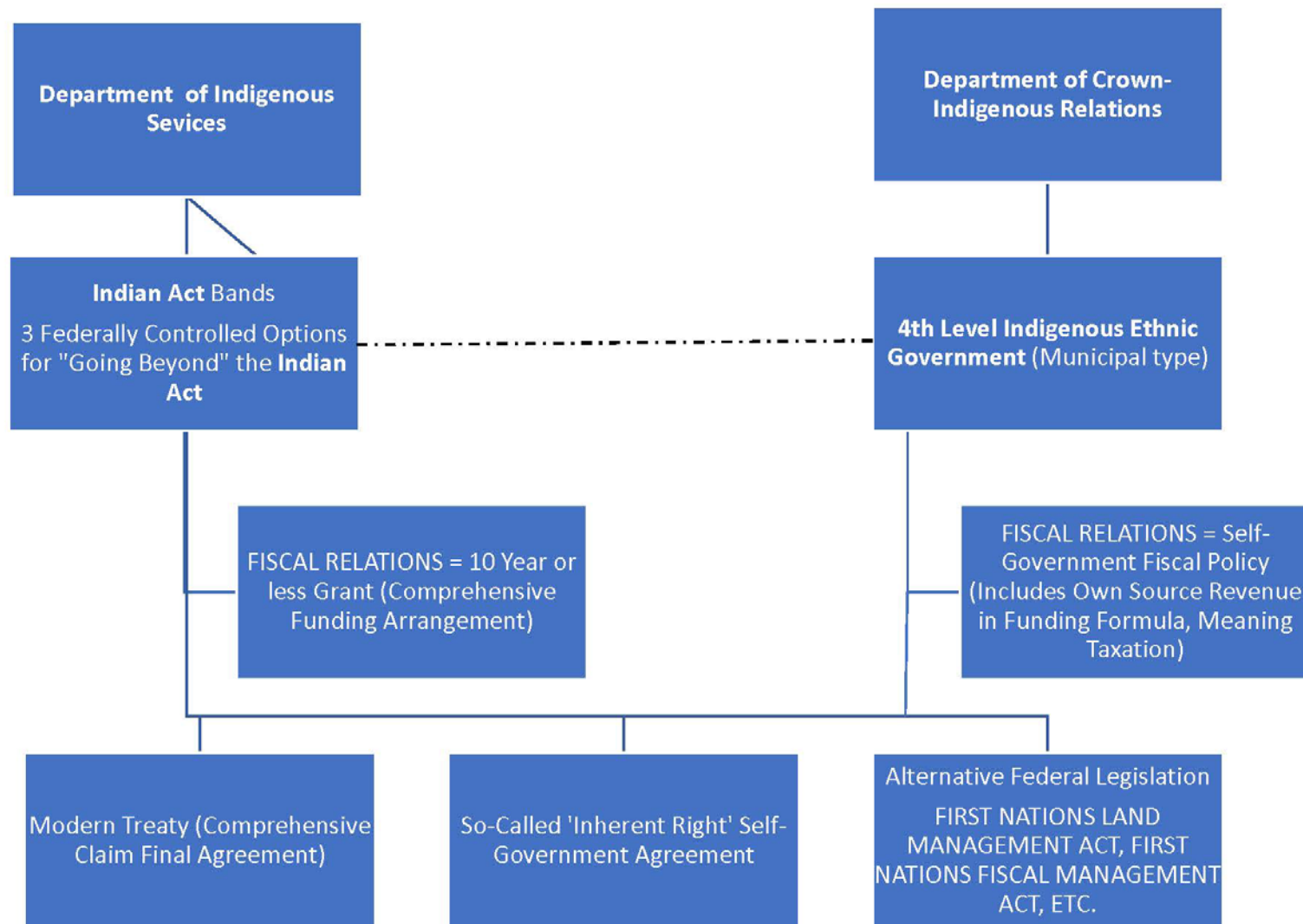
## "Self-Gov't" Agreements

- Federal gov't says it recognizes that s.35 includes the "inherent right of self-gov't"
- Federal gov't limits & restricts the nature & scope of the right through its policy
- Federal government wants to get First Nations consent to a narrow definition of rights
- Federal government requires provincial role & allows provincial veto
- In the process, fiscal resources are capped or reduced
- Federal Crown abandons responsibility to ensure that needs are met without assuring adequate revenues for First Nations

## Alternative Federal Legislation (Sec. 91.24)

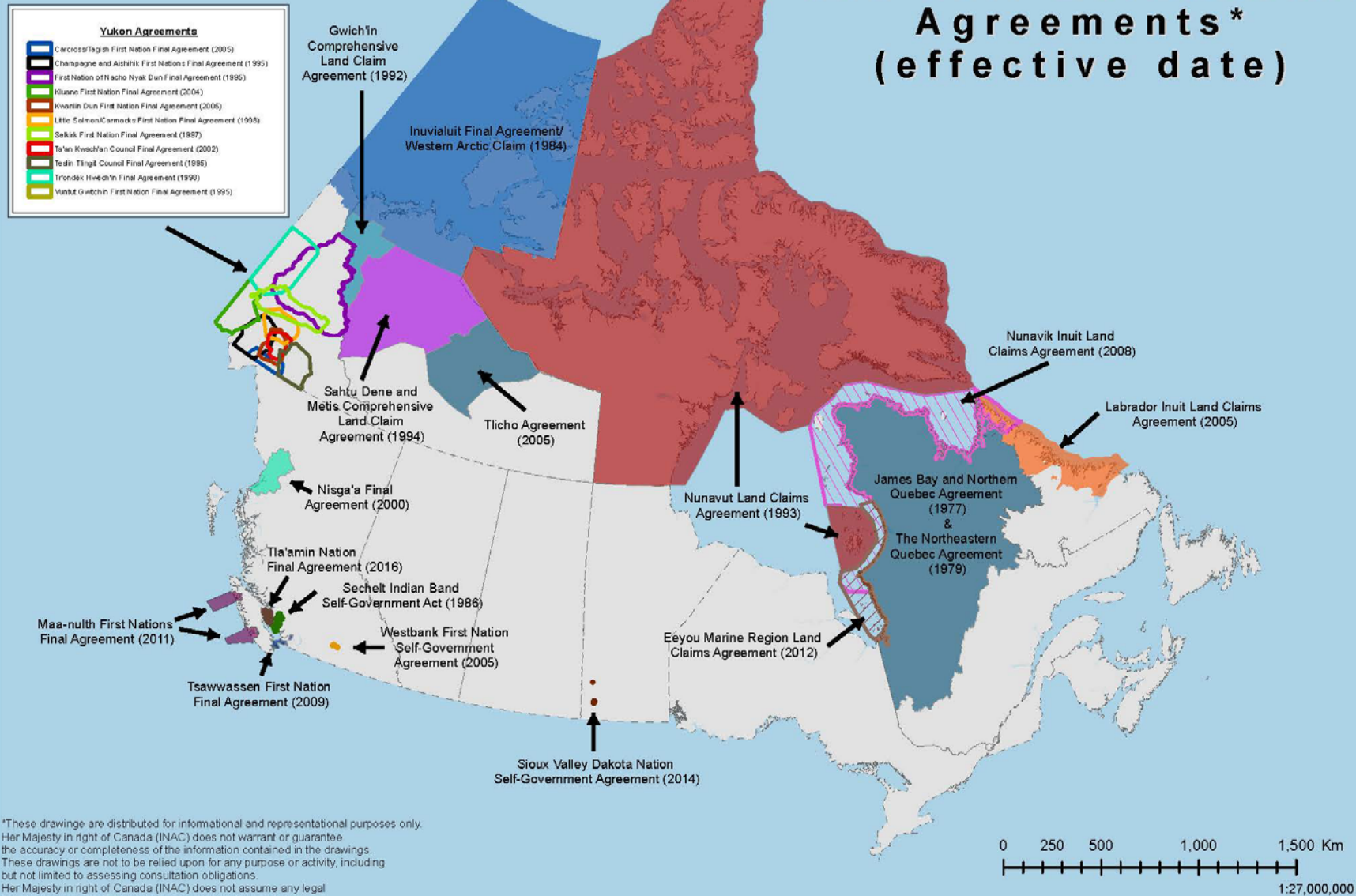
- Continue interference by legislating in areas that even Canada admits are internal to Indigenous Nations and integral to their culture
- ie., elections, lands, definition of "Band" modify legislative base to facilitate 'inherent right' negotiations
- Consolidate ultimate control of Minister use legislation to limit nature & scope of right: First Nations consent when they opt-in
- Examples are the **First Nations Land Management Act, First Nations Fiscal Management Act, First Nations Elections Act, etc.**

**Federal “Legal Reconciliation Technique” for Converting Indian Act Bands  
into 4<sup>th</sup> Level Indigenous Ethnic Governments  
To Terminate Indigenous Nations Band-by-Band (Completion of Canada’s Colonization Project)**

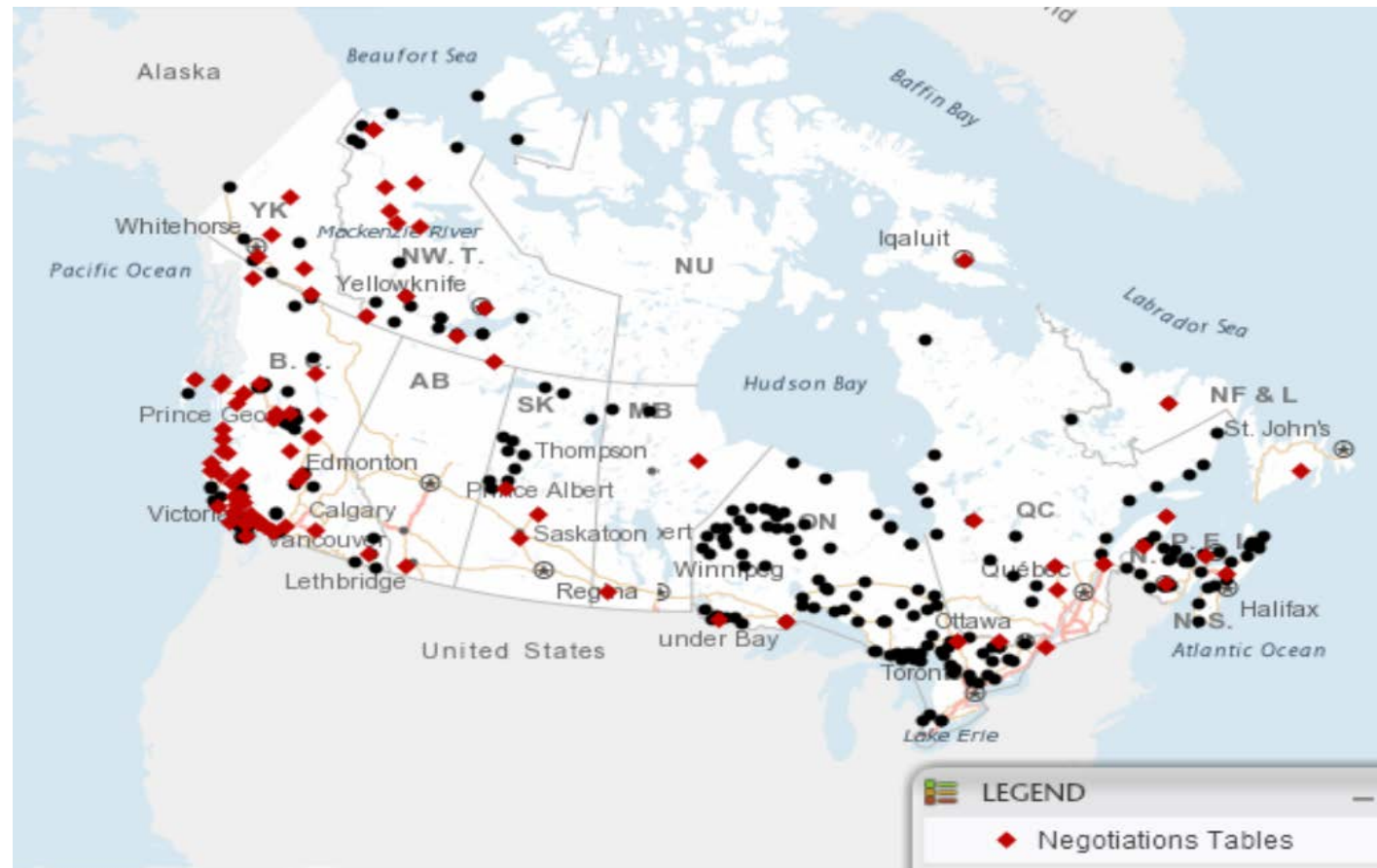




# Modern Treaties and Self-Government Agreements\* (effective date)



# Comprehensive Land Claims ("Modern Treaties") & "Self-Government" Negotiations



14 COMPREHENSIVE  
LAND CLAIMS  
NEGOTIATIONS  
OUTSIDE OF BRITISH  
COLUMBIA.

8 TRANS-BOUNDARY  
(NWT & NUNAVUT)  
NEGOTIATION TABLES.

53 NEGOTIATION  
TABLES IN THE BRITISH  
COLUMBIA TREATY  
PROCESS.

Comprehensive  
Land Claims  
Settlements  
So-Called  
“Modern  
Treaties”



# BC Treaty Commission

## Modern Termination Agreement Negotiations





# Comprehensive Land Claims Policy "Modern Treaty" Negotiations Outside of BC

# Atlantic Region

- ▶ **Mi'kmaq of Prince Edward Island** - Comprehensive Land Claim with Self-Government - Exploratory Discussions.
- ▶ **Mi'kmaq of Nova Scotia** - Comprehensive Land Claim with Self-Government - Agreement-in-Principle
- ▶ **Mi'kmaq & Maliseet of New Brunswick** - Comprehensive Land Claim with Self-Government - Framework Agreement.

**NOTE:** These tables are categorized as comprehensive land claim negotiations because they have the dual focus of bringing clarity to Aboriginal rights and implementing the historic Peace and Friendship Treaties of 1760–1761. The negotiated agreements will honour historic treaty rights. **SOURCE: Government of Canada**



# Quebec & Labrador Region

- ▶ **Quebec Innu** - Regroupement Petapan Inc. - Comprehensive Land Claim with Self-Government - Final Agreement.
- ▶ **Atikamekw Nation Council** - Comprehensive Land Claim with Self-Government - Agreement-in-Principle.
- ▶ **Mi'gmaq of Quebec** - Comprehensive Land Claim with Self-Government - Agreement-in-Principle.
- ▶ **Maliseet of Viger First Nation** - Comprehensive Land Claim with Self-Government - Exploratory Discussions.
- ▶ **Labrador Innu Nation Claim** - Comprehensive Land Claim with Self-Government - Final Agreement.

# NWT & Yukon Regions

- ▶ **Acho Dene Koe/Fort Liard Metis** - Comprehensive Land Claim with Self-Government - Agreement-in-Principle.
- ▶ **Akaiicho Treaty 8 Dene** - Comprehensive Land Claim with Self-Government - Agreement-in-Principle.
- ▶ **Dehcho First Nations** - Comprehensive Land Claim with Self-Government - Agreement-in-Principle.
- ▶ **K'atlodeeche First Nation** - Comprehensive Land Claim with Self-Government - Exploratory discussions.
- ▶ **Northwest Territory Métis Nation** - Comprehensive Land Claim Agreement with Self-Government - Agreement-in-Principle.
- ▶ **White River** - Comprehensive Land Claim with Self-Government - Framework Agreement. (Yukon)



"Algonquins of Ontario"



# “Algonquins of Ontario”

## Example of What’s Wrong with Policy

- ▶ Essentially a land grab of the Eastern Ontario/National Capital Region, Parliament Hill, etc. by Crown gov’ts.
- ▶ Pikwakanagan (Golden Lake Band) asserted land claim in 1983 to Canada and again in 1985 to Ontario, without agreement from other Algonquin Nation bands.
- ▶ Ontario accepted to negotiate first in 1991 then the federal government in 1992.

## “Algonquins of Ontario” (cont.)

- ▶ “Algonquins of Ontario” is a policy fiction created by Ontario and federal governments.
- ▶ The Algonquin Nation is not divided by the Ottawa River, which was a major travel route to and from Oka.
- ▶ There are 10 federally recognized Algonquin Indian Act Bands 9 in Quebec and 1 in Ontario, 8,000-10,000 People.

## “Algonquins of Ontario” (cont.)

- ▶ The federal approach to beneficiaries in the “AOO” claim gives standing to about 6,000-8,000 non-status individuals and 9 non-status groups who in many instances would likely not meet the legal requirements as title holders.
- ▶ As a result the non-title holders are provided with an opportunity to the de facto extinguishment of Algonquin Title and Rights to territory over which other Algonquin First Nations assert Aboriginal Title & Rights.



## “AOO” AIP Highlights

- ▶ De facto Extinguishment of Algonquin Aboriginal Title with no compensation for prior infringement (modify & release);
- ▶ Non-Title Holders get section 35 status.
- ▶ Replaces Golden Lake Reserve with private property (Fee Simple);
- ▶ Converts Pikwakanagan Indian Act Band Council system into a 4<sup>th</sup> Level Ethnic Municipal type government through a self-government agreement & Pikwakanagan gives up tax exemption/immunity & accepts “Own Source Revenue”/funding levels;
- ▶ Loans are now forgiven.

## Algonquins of Ontario Settlement Area Boundary

50 0 50 km



Algonquins of Ontario Settlement Area Boundary



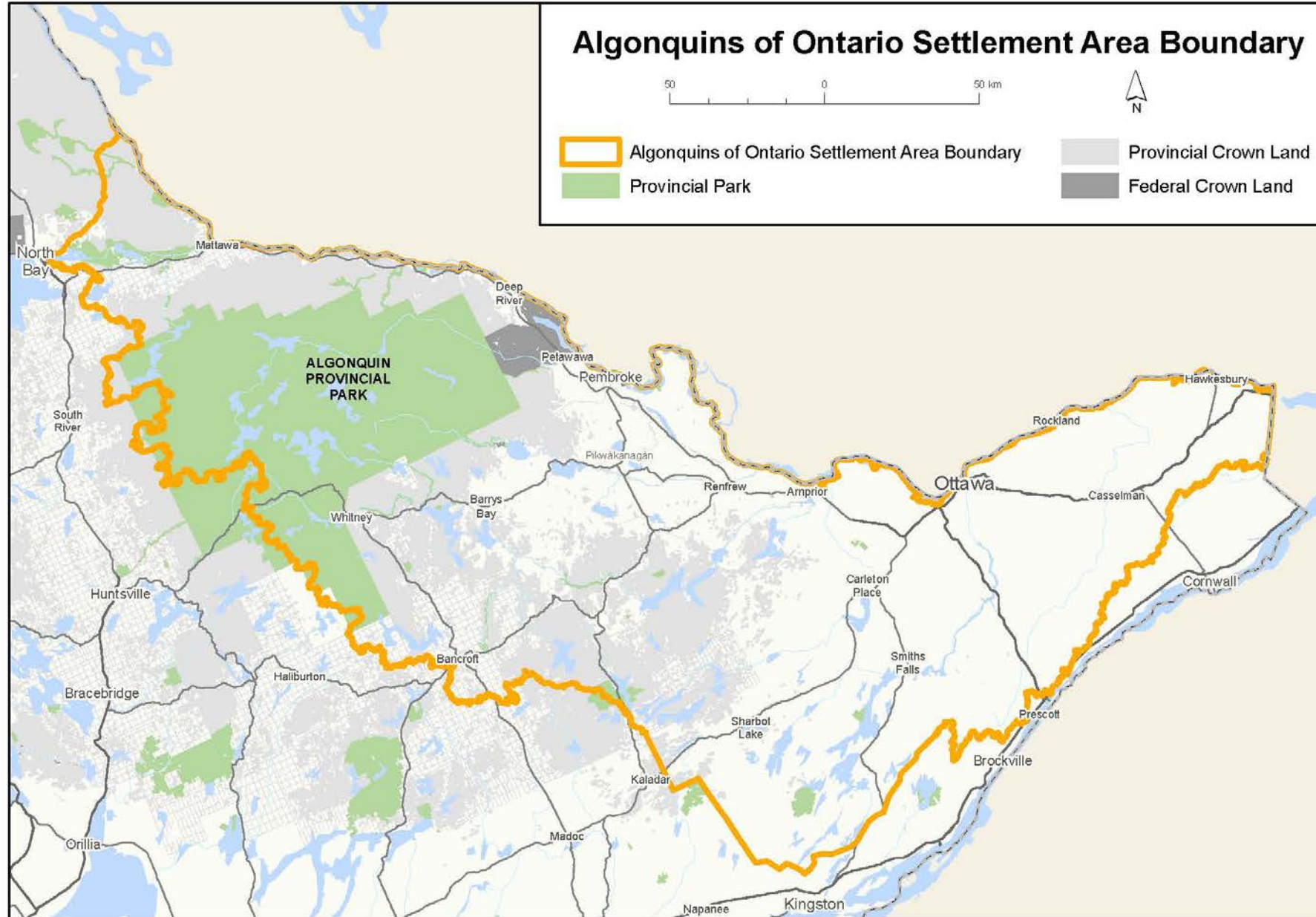
Provincial Park



Provincial Crown Land



Federal Crown Land



# STOP TRUDEAU'S ASSIMILATION CAMPAIGN

#WhitePaper2019  
#IdleNoMore



Honour Our Treaties  
&  
Nation-to-Nation  
Relationships

**INDIGENOUS NATIONS ARE NOT  
CANADA'S 4TH LEVEL OF GOVERNMENT!!!**

Government of Canada's  
Approach to  
Implementation of the  
Inherent Right and the  
Negotiation of Aboriginal  
Self-Government (1995):  
The Federal so-called  
"Inherent Right" Policy



# Indian Act Bands vs. “Self-Governing First Nations”

- ▶ The government of Canada even has a website on “Self-Government”, which states:  
*“ Unless they have negotiated self-government, most First Nations are currently governed by the Indian Act. They elect chiefs and councils to make decisions on their behalf and pass by-laws in a limited number of areas...First Nations have been living under the Indian Act for over 140 years. The Indian Act establishes a limited form of local administration.”*
- ▶ The “ **limited form of local administration**” the Indian Act “ **band councils**” exercise is only on their Reserves. The federal so-called ‘Inherent Right’ policy only provides for municipal type ethnic “ **Indigenous government**” and such “ **Self-Governing First Nations**” only have delegated authority on what would become municipal-type lands (former Reserve lands).

## Federal 2020-2021 Plan Involves Continuing with Termination Tables and Involving Metis and Inuit in “Redesign” of Federal Comprehensive Land Claims & “Self-Government” Policies

- ▶ According to Canada’s Crown-Indigenous Relations and Northern Affairs Canada Departmental Plan 2020–21:

*“ CIRNAC will continue discussions at over 145 discussion tables to co-develop modern treaties, self-government agreements and other constructive arrangements. These discussions explore shared priorities and joint propositions for mandates to advance interests, foster self-determination and work towards closing socio-economic gaps.”*

*“ CIRNAC will continue ongoing work with First Nations, Inuit and Métis to redesign the Comprehensive Land Claims and Inherent Right policies. CIRNAC will continue to work in partnership with pre-1975 treaty First Nations through treaty commissions in Saskatchewan and Manitoba on the affirmation of Indigenous rights and self-determination as well as through treaty discussion tables.”*



AFN Graph of Federal 1995  
'Inherent Right' Policy.  
Still the Same in 2020



### **“Inherent right” policy, 1995**

- federal government says it recognizes that s.35 includes the “inherent right of self government”
- federal government limits & restricts the nature & scope of the right through its policy
- federal government wants to get Indian consent to a narrow definition of rights
- federal government requires provincial role & allows provincial veto

#### **Canada’s definition of “inherent”**

- matters that are “internal” & “integral to the culture” of a First Nation
- ie., internal governance, reserve lands, administration, delivery of services, culture
- Canada still retains ultimate control by defining the limits to what can be negotiated under each heading

#### **Areas where Canada will delegate**

- matters where Canada will not recognize any inherent right
- Canada will only delegate: Indian nations must recognize paramount federal authority
- ie., taxation; trade & commerce; justice; gaming; fisheries; etc.
- provinces get vetoes in their areas

#### **Non negotiables**

- self determination
- extinguishment & terra nullius
- sovereignty, international treaty-making
- international trade, import & export;
- trade & commerce
- criminal law
- fiscal policy

### **'Pilot Projects', Legislation, Negotiations, 1996**

- the same "inherent right" policy is being applied by Canada at every negotiating table
- Canada's intention is to use negotiations to get Indian consent to a narrow definition of the nature & scope of Aboriginal & Treaty rights
- in the process, fiscal resources are capped or reduced
- federal Crown abandons responsibility to ensure that needs are met without assuring adequate revenues for First Nations

**Devolution**

**Dismantling**

**Self government negotiations**

**Health Transfer**

**Financial Transfer Agreements**

**Education Transfer**

**Land claims negotiations**

**Treaty discussions**

fill in your process here.....

### **Indian Act II, 1996**

- continue interference by legislating in areas that even Canada admits are internal to Indian nations and integral to their culture
- ie., elections, lands, definition of "Band"
- modify legislative base to facilitate 'inherent right' negotiations
- consolidate ultimate control of Minister
- use legislation to limit nature & scope of right: Indians consent when they opt-in

Alternative Federal Legislation Out of  
Indian Act (using section 91.24):  
First Nations Land Management Act  
(FNLMA) & First Nations Fiscal Management  
Act (FNFMA)



# FNLMA & FNFMA = Assimilation into Canada's Property & Tax Systems

- ▶ The **FNLMA** and Alternative Federal Legislation is one component of a larger federal strategy to eliminate Indian Reserves and ultimately the **Indian Act** by financially convincing/coercing Bands into signing 4<sup>th</sup> Level Ethnic municipal type "Self-Government" Agreements or "Modern Treaties" involving the de facto extinguishment of Aboriginal Title and coming under a new "self-government" funding policy that is based on "Own Source Revenue", which means all forms of Canadian taxation. **See section 45(4) of the FNLMA.**
- ▶ The **FNLMA** adopts a corporate model for capitalizing on First Nation lands and resources. The **FNLMA** represents a fundamental change in the objectives of the land management regime on the reserve, where the land holdings are collective in nature.
- ▶ If you look at the lists of Bands under both the **FNLMA** and the **First Nations Financial Management Act (FNFMA)** you will see many bands have opted out of the **Indian Act** and opted into both laws (**FNLMA & FNFMA**) to accept Canada's property and tax systems being applied to their people and their former Reserve land base.

# SIGNATORY COMMUNITIES

To the Framework Agreement on First Nation Land Management





# How many First Nations are currently a part of the Framework Agreement?

Signatory participation in the *Framework Agreement* has increased from the original 14 signatories to an astounding 153, with wait listed First Nations bringing the number to 207! This number accounts for almost 1 in 3 First Nations in Canada! Today there are 80 First Nation communities who have ratified their community land codes under the *Framework Agreement*, with numerous other First Nations in various stages of land code development.

## Operational Communities

**BC:**  
 Aitchelitz  
 Beecher Bay  
 Campbell River  
 Chawathil  
 Cheam  
 Haisla Nation  
 Katzie  
 Kitselas  
 K'omoks  
 Kwantlen  
 Kwaw-kwaw-apilt  
 Lake Cowichan  
 Leq' a: mel  
 Lheidli T'enneh  
 Lower Nicola  
 Malahat  
 Matsqui  
 McLeod Lake  
 Metlakatla  
 Musqueam  
 Nak'azdli Whut'en  
 Nanoose  
 Scowlitz  
 Seabird Island  
 Shuswap  
 Shxw'á:y Village  
 Shxw'ow'hamel  
 Skawahlook  
 Skowkale

**MB:**  
 Brokenhead Ojibway  
 Chemawawin Cree  
 Long Plain  
 Misipawistik  
 Nisichawayasihk Cree Nation  
 Opaskwayak Cree  
 Swan Lake

**ON:**  
 Anishnaabeg of Naongashiing  
 Atikameksheng Anishnawbek  
 Bingwi Neyaashi Anishinaabek  
 Chippewas of Rama  
 Dokis  
 Georgina Island  
 Henvey Inlet  
 Long Lake #58  
 Magnetawan  
 Mississauga  
 Nipissing  
 Scugog Island  
 Shawanaga  
 Temagami  
 Wasauksing

**QC:**  
 Abenakis de Wolinak

**NB:**  
 Madawaska Maliseet

**NFLD:**  
 Miawpukek

**SK:**  
 Sliammon\*  
 Songhees  
 Soowahlie  
 Squiala  
 St. Mary's  
 Stz'uminus  
 Sumas  
 Tsawout  
 Tsawwassen\*  
 Ts'kw'aylaxw  
 Tsleil-Waututh  
 T'Sou-ke  
 Tzeachten  
 We Wai Kai  
 Westbank\*  
 Williams Lake  
 Yakwekwioose

**SK:**  
 Flying Dust  
 Kahkewistahaw  
 Kinistin Saulteaux  
 Mistawasis  
 Muskeg Lake  
 Muskoday  
 One Arrow  
 Whitecap Dakota  
 Yellow Quill

## Developmental Communities

**BC:**  
 Akisq'nuk  
 Cowichan  
 Ditidaht  
 Fort Nelson  
 Homalco  
 Iskut  
 Kitsumkalum  
 Lytton  
 Namgis  
 Neskonlith  
 Okanagan  
 Osoyoos  
 Penelakut  
 Penticton  
 Splatlin  
 Sts'ailes  
 Tahltan  
 T'it'q'et  
 Tsartlip

**AB:**  
 Alexis Nakota Sioux Nation  
 Enoch  
 Fort McKay  
 Fort McMurray #468  
 Loon River  
 Tsuu T'ina

**SK:**  
 Carry The Kettle  
 English River  
 George Gordon  
 James Smith  
 Lac la Ronge  
 Sakimay  
 Wahpeton Dakota

**MB:**  
 Norway House  
 Fisher River

**NWT:**  
 K'atl'Odeechie

**ON:**  
 Algonquins of Pikwakanagan  
 Animiigoo Zaagi'igan  
 -Anishinaabek  
 Beausoleil  
 Big Grassy River  
 Brunswick House  
 Chisleau Cree  
 Chippewas of the Thames  
 Fort William  
 Hiawatha  
 Kettle & Stony Point  
 Mattagami  
 M'Chigeeng  
 Moose Deer Point  
 Rainy River  
 Saugeen

Serpent River  
 Shesheganing  
 Wikwemikong

**QC:**  
 Abenakis d'Odanak  
 Mashteuiatsh  
 Listuguj Mi'gmaq

**NB:**  
 Woodstock

**NS:**  
 Membertou  
 Paqtnkek Mi'kmaw Nation

(\*Implementing full self-government or treaty)

# Federally Created National Institutions for Assimilation into Canada's Tax & Property Systems

- ▶ Once a First Nation has been added to the schedule of the FNFMA, it can begin working with any or all of the Federally created and controlled institutions established under the act:
- ▶ The First Nations Tax Commission (FNTC) is a corporation that regulates the approval of property tax and new local revenue laws of participating First Nations, builds administrative capacity through sample laws and accredited training, and reconciles First Nation government and taxpayer interests.
- ▶ The First Nations Financial Management Board (FNFMB) is a corporation used by the federal government to assist First Nations to conform with federal laws and policies in developing their local financial management regimes and provides independent certification to support borrowing from **First Nations Finance Authority** and for First Nations economic development.
- ▶ The First Nations Finance Authority (FNFA) is a corporation that as part of the federal government's off-loading of fiduciary and Treaty responsibilities and obligations, permits qualifying First Nations to work co-operatively in raising long-term private capital at preferred rates through the issuance of bonds, and also provides investment services to First Nations.
- ▶ Since 2006, 280 First Nations are scheduled to (or participating in) the FNFMA, and with Canada controlling and managing options for economic development, more are asking to be added on a regular basis. 125 of these First Nations now collect tax under the FNFMA, 145 have had their financial performance certified by the First Nations Financial Management Board, 89 have qualified as borrowing members for purposes of First Nations Finance Authority borrowing

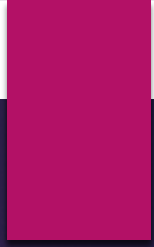


## A New Category of Secret Termination Tables: The “Recognition of Rights and Self-Determination” Negotiation Tables – Federal “Partners”

- As of January 2020, there are over 80 tables which represent more than 390 Indigenous communities (FN's, Metis & Inuit), with a total population of more than 760,000 people. To date, 28 preliminary-type agreements have been signed as a result of Recognition of Indigenous Rights and Self-Determination discussions. Over \$118 million has been allocated to support Recognition of Indigenous Rights and Self-Determination discussions. (SOURCE: Federal Government)

# Federal Steering Committee on Section 35 Rights (an Assistant Deputy Minister-Level Committee)

- ▶ Canada has also recently taken steps to create efficiencies in the federal mandating and approval process for section 35-related negotiations, including modern treaties and self-government agreements. Minister of Crown-Indigenous Relations can now sign non-binding agreements, such as preliminary-type agreements (e.g. framework agreements, memoranda of understanding) and agreements-in-principle that are within the federal policy framework, upon the recommendation of the Federal Steering Committee on Section 35 Rights (an Assistant Deputy Minister-level committee). After signing an agreement-in-principle, the Minister of Crown-Indigenous Relations can immediately initiate final agreement negotiations within the policy framework without going to Cabinet.
- ▶ In addition, the Minister of Crown-Indigenous Relations can now expedite to the final agreement stage by skipping the agreement-in-principle stage or, in cases where all negotiation matters are finalized during agreement-in-principle negotiations and the agreement is within the existing policy framework, converting a substantively complete agreement-in-principle into a final agreement.



# Alternative to Ottawa's White Paper 2.0: Self-Determination Plans



# Supreme Court of Canada Imposes a “Burden of Proof” Aboriginal Rights Test



## R. v Van Der Peet (1996)

- ▶ The right must involve an activity that was a “practice, tradition or custom [that] was a central and significant part of the [Aboriginal] society’s distinctive nature.
- ▶ The activity must have existed prior to contact with European settlers.
- ▶ The activity, even if evolved into modern forms, must be one that continued to exist after 1982, when the Constitution Act was passed.

# International Covenant on Civil and Political Rights & International Covenant on Economic, Social and Cultural Rights

## ► *Article 1 - ICCPR*

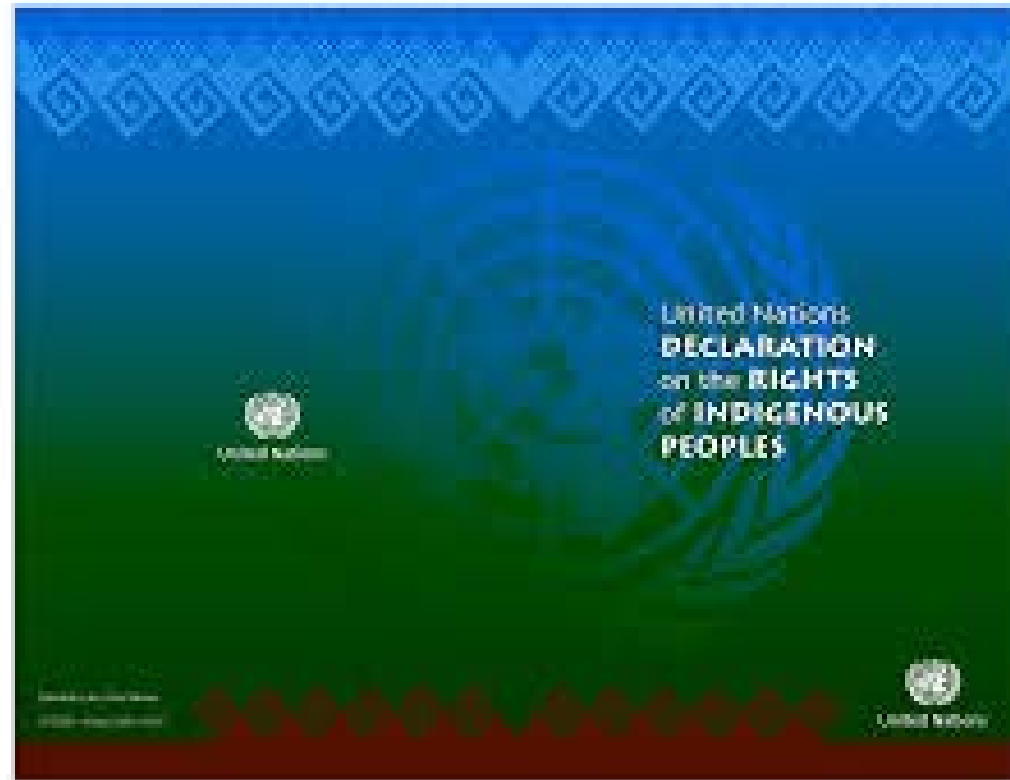
1. **All peoples have the right of self-determination.** By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

## ► *Article 1 - ICESCR*

1. **All peoples have the right of self-determination.** By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.



# United Nations Declaration on the Rights of Indigenous Peoples (2007)



# Highlights of Key Articles of UNDRIP - 2007

- ▶ **Article 3 – Right to Self-Determination.**
- ▶ Article 18 – right to participate in decision-making through representatives chosen by themselves in accordance with their **own procedures**, as well as to maintain and develop their own **Indigenous decision-making institutions**.
- ▶ Article 19 – FPIC required before legislation/administration measures.
- ▶ **Article 26 – Restoration of traditional lands, territories, resources.**
- ▶ **Article 27 – Fair process jointly developed to adjudicate rights to lands, territories, resources.**
- ▶ **Article 28 – Restitution where lands, territories & resources not restored.**
- ▶ **Article 32 – FPIC required for and development affecting lands, territories, resources.**
- ▶ **Article 37 – Rights from Treaties**, agreements, constructive arrangements.

# Trudeau Gov't Re-Writing of UNDRIP Standards

- ▶ Canada has developed a domestic policy & law definition & a regulatory regime for implementing UNDRIP “in accordance with the Canadian constitution” through a National “Reconciliation Framework”.
- ▶ Canada views modern treaties and self-government agreements as the ultimate expression of free, prior and informed consent (Minister Bennett’s Mandate Letter).
- ▶ Canada views federal legislation creating national institutions as supporting Nation rebuilding – such as in land management (FNLMA) and financial administration (FNFMA).



# Developing Our Own Self-Determination Plans

- ▶ We are told by governments, and too often by our own leadership, that there is no alternative to the cookie-cutter surrender of lands and resources provided at the existing government negotiation tables. The fact is, we do have another course of action, one that is supported by the International laws which recognize **all peoples right of self-determination**.
- ▶ My vision is to see First Nations protecting their traditional lands and waters by developing and implementing their own Self-Determination Plans for Community Development and Nationhood based on **restoration of stolen lands, territories and resources, or restitution where lands and resources aren't returned**.

# ASSESSING HISTORY, LANGUAGE, CULTURE AND INDIGENOUS LAW

- Know your First Nation history, language, culture, customs, practices, laws and the treatment of your peoples by successive Crown governments (both oral & archival) and connection to your territory, lands & resources. This is important to show evidence when exercising rights and/or responding to challenges from Crown governments/Industry regarding their current or planned projects/activities on your traditional lands.

# ASSESSING COLLECTION OF INFORMATION/EVIDENCE

- ▶ For decision-making and negotiations support regarding traditional territories, First Nations historical substantiation & documentation needs to be combined with contemporary land & resource management information; 1) Resource models & inventories, 2) Obstacles from legislative/regulatory/governance frameworks 3) List of third parties operating without consent on First Nations traditional territory, 4) Identification of alienated lands vs. less encumbered lands.



# VALUATION OF LANDS & RESOURCES FOR SUSTAINABLE DEVELOPMENT

- Identify some criteria and provide some parameters for attaching a value (or range of values) to Aboriginal Title/Historic Treaty lands & resources in Canada. Also estimate the value of resources taken out of Aboriginal Title/Historic Treaty lands annually (ie., timber, minerals, hydro, fish & wildlife, etc.). Assess National, Provincial and Corporate accounting practises, assess the impact the reality Aboriginal Title/Treaty Rights have on the balance books of major resource extraction companies. The existence of Aboriginal Title/Treaty Rights as a legal interest stands to affect corporate security of tenure, supply, stock valuation, cost of borrowing, etc. Also identify issues Re: WTO/NAFTA rules & hidden subsidies/unfair competition, etc.

# ASSESSING NEGOTIATION/LITIGATION READINESS/SUPPORT

1. Knowledge of Canadian constitutional & international legal/policy frameworks of Indigenous, Aboriginal, Treaty & Human Rights and legal counsel,
2. an information database (historical & resource management) to draw from during negotiations
3. access to an interdisciplinary team of advisors (in-house or consultants) for Indigenous Leadership/Peoples and
4. identification of sources of sustained funding,
5. Preparation of litigation and/or international strategies as options.

# CONCLUSION

Since 2015, by co-opting our terminology like "Nation-to-Nation", "Reconciliation", "Decolonization", "Self-Determination" and making big promises the Trudeau government was able to operate in a secret, top-down manner using AFN to give the appearance of "co-development" of massive, unprecedented, changes to policy, law & structure.

While the Trudeau government stated it was delaying its "Rights Recognition" Framework Legislation it has proceeded to implement the "Framework" in separate components at different tables: "Recognition/Self-Determination" Modern Treaties, Self-Government & Alternative Legislation (FNLMA, FNFMA).



# Trudeau's "Nation-to-Nation" Process in Canada

Prime Ministers' Office & Privy Council Office

Cabinet Committee on Reconciliation

AFN-Canada Cabinet Committee (Bilateral Mechanism)

AFN Executive Committee

AFN National Chief

# Conclusion

- ▶ Because of dependency on federal transfer payments most Band Councils and Bands follow Ottawa's direction on governance and land management.
- ▶ And 'In principle' the federal "reconciliation framework" seems to make sense. Ottawa is funding Comprehensive Community Planning, Reconstitution of Nations, and a new fiscal policy based on 10 year or less, comprehensive funding agreements.
- ▶ However, Ottawa's plan is to facilitate Indian Act Band's to develop their administrative and financial capacity to sign onto Modern Section 35 Agreements converting from being an Indian Act Band who is part of one of the original Indigenous Nations, into a 4<sup>th</sup> level ethnic government at the bottom of the Canadian Federation.
- ▶ That's why in my opinion, community driven self-determination plans and self-representation governance is a better long-term plan for future generations to get out of the Indian Act on our own terms. From the ground up instead of the top down!

# 1969 - 2019 = 50<sup>th</sup> Anniversary of White Paper

- ▶ For the last 50 years the main goals of the **1969 White Paper on Indian Policy** have been implemented through components rather than as a package and over 5 decades rather than 5 years!
- ▶ Prime Minister Justin Trudeau is implementing not only his father policies, but also those of Jean Chretien's, who was former Minister of Indian Affairs, Minister of Justice & as Prime Minister, he imposed the 1995 so-called "Inherent Right" municipal Policy, the First Nations Land Management Act and the First Nations Fiscal Management Act!
- ▶ As the late Arthur Manuel said: self-determination is the antidote to colonialism, so as Indigenous communities & Nations we need to develop their own self-determination plans and resist Ottawa's long-standing Termination Plan!



**WE NEED TO STOP THIS PROCESS!  
AND EXERCISE OUR SELF-DETERMINATION!**

