Indigenous Activists Networks
Defenders of the Land, Truth Campaign, Idle No More

PRESS RELEASE

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

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

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

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

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

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

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

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- ***This document is issued by the Coordinating Group of the Idle No More, Defenders of the Land and Truth Campaign Networks.***[8]

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

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

Background:

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

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

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

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

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

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

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

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

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

Federal UNDRIP Bill C-15 Preamble:

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

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

- the preamble states that the doctrine of discovery is "*legally invalid*", but **Bill C-15** contains nothing to acknowledge or reverse the common law's reliance on the **doctrine of discovery** in its interpretation of s. 35 of the *Constitution Act, 1982*;
- the preamble states the urgent need to respect and promote the inherent rights of Indigenous peoples, including their rights to their lands, territories and resources, but then contains no substantive provisions about this in **Bill C-15**;
- the preamble weakly states that the "*declaration is affirmed as a source of the interpretation of Canadian law*", then the preamble goes on to use even weaker wording to the effect that the declaration has "*application in Canadian law*".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNDRIP reflects the Inherent human rights of Indigenous Peoples, it would be inappropriate to define rights holders based on a reference to section 35 of the *Constitution Act, 1982* that is separate from international human rights law.

Bill C-15 does not actually implement UNDRIP

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

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

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

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

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

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

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

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

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

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

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

This section of the Bill C-15 gives the government of Canada a dominant role in interpreting UNDRIP "*principles*" in relation to federal laws, since under Canada's constitutional division of federal and provincial powers, the provincial governments have a veto in subject areas that may affect their jurisdiction.

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

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

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

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

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

Conclusion:

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

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

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

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

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

#LANDBACK!

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

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Indigenous Activists Networks
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ANALYSIS OF FEDERAL BILL C-15:
United Nations
Declaration on the Rights of Indigenous Peoples Act

December 11, 2020

Preface:

On December 3, 2020, bypassing the Indigenous Peoples and Nations, the government of Canada introduced **Bill C-15**: ***An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*** into Parliament.

An annotated **Bill C-15** is provided at the end of this document.

On December 9, 2020, behind the scenes of the proceedings of the Assembly of First Nations Virtual Assembly, the BC First Nations Leadership Council and the Assembly of First Nations, in coordination, used procedural tactics and control of speakers lists to stop Draft Resolution **#6 Conditions to Supporting Bill C-15, Federal Legislation Regarding the United Nations Declaration on the Rights of Indigenous Peoples** (see attached) from being tabled before the Chiefs-in-Assembly for debate.

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

The Agenda of the AFN Virtual Assembly included a presentation by National Chief Bellegarde in support of **Bill C-15** and a presentation by a few members of the AFN Legal Team (Willie Littlechild, Paul Joffe, Mary Ellen Turpel-Lafond) providing a positive explanation of **Bill C-15**. Questions to the AFN Legal Team Members were allowed but no debate on the pros and cons of **Bill C-15** occurred at the AFN Annual General Assembly.

Other than Draft Resolution #6 there were no other Resolutions on **Bill C-15**, so the AFN will continue to rely on past AFN resolutions to say it has a mandate to support **Bill C-15**.

Now, the federal government will point to AFN, and the National Metis and Inuit organizations to say **Bill C-15** has been positively received by Indigenous Peoples and Nations. In fact, this has been the message from federal Ministers like Carolyn Bennett and the national mainstream media.

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

#LANDBACK!

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

OUR WARNING TO THE PEOPLE!

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

Remember, the first recommendation of the **1996 Royal Commission on Aboriginal Peoples** was

> *The Commission recommends that:*
>
> *1.16.1 To begin the process, the federal, provincial and territorial governments, on behalf of the people of Canada, and national Aboriginal organizations, on behalf of the Aboriginal peoples of Canada, commit themselves to building a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility; these principles to form the ethical basis of relations between Aboriginal and non-Aboriginal societies in the future and to be enshrined in a new Royal Proclamation and its companion legislation (see Volume 2, Chapter 2).*
>
> *1.16.2 Federal, provincial and territorial governments further the process of renewal by (a) acknowledging that concepts such as terra nullius and the doctrine of discovery are factually, legally and morally wrong;*
>
> *(b) declaring that such concepts no longer form part of law making or policy development by Canadian governments;*
>
> *(c) declaring that such concepts will not be the basis of arguments presented to the courts;*
>
> *(d) committing themselves to renewal of the federation through consensual means to overcome the historical legacy of these concepts, which are impediments to Aboriginal people assuming their rightful place in the Canadian federation; and*
>
> *(e) including a declaration to these ends in the new Royal Proclamation and its companion legislation."*

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

For example, the international Indigenous right of self-determination (**UNDRIP-Article 3**) will be interpreted and implemented through the federal so-called '***Inherent Right***' to self-government policy, which is not based on the international right of self-determination.

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

Where agreements with Indigenous Peoples and Nations are signed a 4th level of "*Indigenous government*" is created through federal legislation. Below in status then the federal, provincial and municipal governments.

Examples of 4th level "*Indigenous governments*" already exist in Canada where "*Modern Treaties*" and "*self-government*" agreements have been signed.

The federal Liberal government of Prime Minister Jean Chretien ignored most of the final Report and Recommendations of the **1996 Royal Commission on Aboriginal Peoples** and imposed the 1995 '***Inherent Right***' policy to create 4th level "*Indigenous governments*". This "self-government" policy is still in use today at falsely named "*self-determination*" negotiation tables across Canada by the federal Liberal government of Prime Minister Justin Trudeau.

INHERENT RIGHT POLICY [1995-2020]

- *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 [Indigenous Peoples and Nations] consent to a narrow definition of rights*
- *Federal government requires provincial role & allows provincial veto*

If passed, **Bill C-15** will be used by the government of Canada to reinforce the status quo and Canada has made it clear that they want national laws—many of which violate Indigenous rights—to prevail over UNDRIP.

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

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

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

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

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- The racist and "*frozen in time*" "*Van der Peet test*" for establishing Aboriginal rights.
- The ability for the Crown to infringe Aboriginal rights based on the "*Sparrow test*".
- The erosion of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles.

Introduction:

The **United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP), is the longest negotiated human rights document in history, it was mainly held up by governments, including Canada, who wanted to deny that Indigenous Peoples have the right to self-determination, in its fullest expression. The right to self-determination is the main remedy for colonization and written into a number of binding international treaties, including the so-called Decolonization Covenants: **the UN Covenant on Civil and Political Rights** (**ICCPR**), the **UN Covenant on Educational, Social and Cultural Rights** (**ICESCR**), that Canada is a party to. While it states that ALL Peoples have the right to self-determination, Canada for the longest time denied that Indigenous Peoples have this right and standing in international law and now Canada is trying to domesticate it further.

The issue is that you cannot domesticate international law. International law is approved and developed at the international level, and these standards cannot be lowered at the national level. There are at least three major sources of international law: treaties (written law that parties signed on to), customary international law (and arguably UNDRIP already constitutes that) and principles of international law, so the principles enshrined in UNDRIP also constitute international law. Customary International Law is developed through the belief that the standards constitute law, as evidenced by the now universal endorsement of UNDRIP, with even the four settler colonial states, including Canada, voted against it in 2007, reversing their position; and a state practice, including through implementation on the ground.

TROUBLING NEGOTIATIONS OF UNDRIP

There were three main drafts of the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**.[2]

- 1994, the Original Text version of UNDRIP was approved by two committees of the United Nations, the Working Group on Indigenous Populations and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This Original Text version of UNDRIP was developed by independent experts, with input and support of a number of Indigenous Peoples' representatives.

- 2006, a second amended version of UNDRIP was the Human Rights Council version and was written by Chairperson Luis Enrique Chavez of the Working Group on the Draft Declaration and was adopted by the United Nations Human Rights Council. This followed a decade of politicized negotiations with government representatives often led by Canada wanting to undermine the right of Indigenous Peoples to self-determination. The changes in the Chair's draft were not widely approved by Indigenous Peoples' representatives.

- 2007, the final version of UNDRIP is the United Nations General Assembly version, which was passed by the United Nations General Assembly after changes were made by the African Union, changes that were never properly presented to Indigenous Peoples.

It is the first Original Text version of UNDRIP drafted by hundreds of Indigenous representatives over a period of years with their direct participation, which was then undermined by nation states in politicized negotiations. The United Nations General Assembly by resolution adopted the UNDRIP in 2007.

[2] **Indigenous Nations' Rights in the Balance,** *An Analysis of the Declaration on the Rights of Indigenous Peoples,* **By Charmaine White Face, *Zumila Wobaga***, 2013, Living Justice Press

Articles of the **United Nations Declaration on the Rights of Indigenous Peoples** are related to, and affirm, the **Right of Self-Determination of Indigenous Peoples;** their **Free, Prior, Informed Consent** (**FPIC**) over development affecting Indigenous lands, territories and resources; and the obligations of State governments, as well as corporations, to implement the UN Declaration and respect the UNDRIP minimum standards in their relations with Indigenous Peoples are included within existing United Nations instruments: **UN Covenant on Civil and Political Rights** (**ICCPR**), **UN Covenant on Educational, Social and Cultural Rights** (**ICESCR**), **Convention on the Elimination of Racial Discrimination** (**CERD**), **World Trade Organization** (**WTO**)**.**

In September 2007, the UN General Assembly approved a third watered down version of the UNDRIP[3]. Four countries voted against the General Assembly Resolution: Australia, New Zealand, the United States, and Canada. Canada is actually the only country in the world that voted against UNDRIP twice. They first voted against it the UN Human Rights Council in 2006, after which they mounted a campaign to raise concerns amongst developing countries, especially in Africa, that UNDRIP would threaten their states, still none of them voted against UNDRIP and the right to self-determination under which they had decolonized as states. Canada voted against it again at the UN General Assembly in 2007, only alongside the three other settler colonial states. What do these four states have in common?

They are all former British colonies with Indigenous peoples who have had no right to access the Committee on Decolonization due to the USA changing the rules of the process, to include that people who are not colonized by those separated by blue water, cannot access the Committee on Decolonization.

The Harper Government and UNDRIP

At the time, John McNee, Canada's ambassador to the UN told the General Assembly, "*The provisions in the declaration on lands, territories and resources are overly broad, unclear, and capable of a wide variety of interpretations*." The federal minister of Indian Affairs, Chuck Strahl, told the media "*The declaration is worded in such a way that it is inconsistent with the Canadian Constitution, the Charter, several acts of Parliament and existing treaties*."

Reportedly, Prime Minister Harper had expressed concern about the language in the UN Declaration. Publicly, Harper said "*We shouldn't vote for things on the basis of political correctness; we should actually vote on the basis of what's in the document*."

[3] Ibid.

It wasn't until 2010, that the Canadian government announced its endorsement of UNDRIP. Why the change of policy? Quite likely it was because of electoral politics in the face of a looming federal election after a census showed a growing Indigenous population in key ridings.

John Duncan, then Minister of Aboriginal Affairs, said Canada had decided to officially endorse UNDRIP to "*further reconcile and strengthen our relationship with Aboriginal peoples in Canada*."

While the Harper government publicly endorsed UNDRIP, it claimed that the declaration was merely an "*aspirational*" instrument and did not reflect customary international law. Under Harper, the federal government claimed, "*the Declaration does not change Canadian laws. It represents an expression of political, not legal, commitment. Canadian laws define the bounds of Canada's engagement with the Declaration*."

Although UNDRIP is not legally binding in the same way international treaties are, it arguable forms customary international law and contains international legal principles that are binding. It does contain minimum international standards for the human rights and treatment of Indigenous Peoples, as Article 43 of the Declaration provides, the Articles "*constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world*."

In addition to the non-binding UN Declaration, as mentioned above, there are other legally binding documents that Canada is a signatory to, including the **UN Covenant on Civil and Political Rights**, the **UN Covenant on Educational, Social and Cultural Rights**, the International **Convention on the Elimination on Racial Discrimination**, and many others. Taken together, these three documents form the basis for the right of Indigenous Peoples to self-determination in international law.

Canadian Definition of UNDRIP

It is our opinion that the federal UNDRIP Bill C-15 must be reviewed and considered in the broader context of the Trudeau government's record of stealth and deception in its treatment of Indigenous communities and Indigenous Nations for the past five years (2015-2020), particularly the federal government's unilateral development of a Canadian definition of the **UN Declaration on the Rights of Indigenous Peoples**. This constitutes massive, unprecedented changes to policy, law and structure, bypassing Indigenous Peoples and Nations, who are the proper rights-holders, while using the three National Indigenous Organizations (AFN, MNC, ITK) and a many Band Councils in federal secretive, top down discussions, a number of them are already participating in falsely named "*self-determination*" negotiation tables across Canada.

In 2016, Canada showed how qualified and limited its support for UNDRIP is, trying to make it subject to, and subsidiary to, national law. Then Indigenous Affairs Minister, Carolyn Bennett told the United Nations Permanent Forum on Indigenous Issues (UNPFII):

> "***We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution…Canada believes that our constitutional obligations serve to fulfill all 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***."[4] [emphasis added]

Since forming government in 2015, the current Trudeau government has been developing a domesticated **Canadian Definition** of UNDRIP, for example in April 2016, then federal Minister of Natural Resources, Jim Carr told the Standing Committee on Indigenous and Northern Affairs:

> "***the government is in the process of providing a Canadian definition to the declaration…The government is currently in the process of providing greater clarity to these definitions…We are going to get there by following a process and a regulatory regime***"[5]. [emphasis added]

In May 2016, before Minister Bennett stated Canada's qualified support for UNDRIP, then federal Minister of Justice, Jody Wilson-Raybould told the UNPFII:

> "**There is a need for a national action plan in Canada, something our government has been referring to as a Reconciliation Framework*…And we do not need to re-invent the wheel completely. …Within Canada, there are modern treaties and examples of self-government –both comprehensive and sectoral. There are regional and national Indigenous institutions that support Nation rebuilding –for example in land management and financial administration.***"[6] [emphasis added]

Following this 2016 statement to the UN Permanent Forum on Indigenous Issues, then federal Justice Minister Jody Wilson-Raybould told the 2016 AFN Chiefs' Assembly in Niagara Falls:

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[4] Speaking Notes for The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, Announcement of Canada's Support for the United Nations Declaration on the Rights of Indigenous Peoples United Nations Permanent Forum on Indigenous Issues, May 10, 2016.

[5] Federal Minister of Natural Resources, Jim Carr, to Standing Committee on Indigenous and Northern Affairs, April 21, 2016.

[6] Federal Justice Minister Jody Wilson-Raybould's, Opening Address at UN Permanent Forum on Indigenous Issues, May 9, 2016.

> "*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***."[7] [emphasis added]

Canada has made it clear that they want national laws—many of which violate indigenous rights—to prevail over UNDRIP.

Federal 10 Principles on Indigenous Relationships

In 2017, then federal Minister of Justice, Jody Wilson-Raybould issued **10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples**[8], released without any process to get our Free, Prior and Informed Consent as Indigenous Peoples and Nations – in complete violation of the directives from **UN CERD** to implement the right of Free, Prior and Informed Consent. The "*10 Principles*" and **Bill C-15** are based on the common law interpretation of section 35(1) of the *Constitution Act, 1982*, and undermine the international minimum standards regarding the rights of Indigenous Peoples, where the federal government acknowledges "*self-determination*" on one hand but then put it squarely under the umbrella of "*European assertion of sovereignty*", based on the **colonial Doctrine of Discovery** on the other hand.

In the "*10 Principles*", Canada does not directly refer to, but it continues to rely on its **Constitution Act 1867**, which was unilaterally passed by British parliament as the **British North America Act** over 150 years ago and enshrines these colonial systems and structures and the division of powers between the federal and provincial government, leaving no room for recognition of equal Indigenous jurisdiction and power, absent fundamental (constitutional) reforms, which are not contemplated in the "*10 Principles*", or in the federal UNDRIP **Bill C-15**.

When conducting a careful analysis, it becomes clear that the federal UNDRIP **Bill C-15** is consistent with the **10 Federal Principles for Indigenous Relationships**, which were unilaterally issued by the government of Canada that neither substantively nor procedurally meet international minimum standards. The Trudeau government did not engage with, consult, let alone seek the consent of Indigenous Peoples and Nations as the proper Aboriginal and Treaty Rights Holders before releasing the "*10 Principles*" or **Bill C-15** for that matter. Under international law, Indigenous Peoples are subjects, and have standing in international law and the holders of internationally protected Indigenous rights.

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[7] Federal Minister of Justice, Jody Wilson-Raybould's, Speech to the Assembly of First Nations Annual General Assembly, July 12. 2016.

[8] Principles respecting the Government of Canada's relationship with Indigenous peoples, July 14, 2017.

The federal "*10 Principles*" and now **Bill C-15** are a blatant attempt to lower or unilaterally undermine the essence of international obligations, international legal principles and international customary law.

Take the foundational international right of self-determination, the international remedy for colonialism. There is now international consensus that this right extends to Indigenous Peoples, as it is now enshrined in **Article 3** of **UNDRIP**, which replicates **Article 1(1)** of the **International Covenant on Civil and Political Rights** (**ICCPR**) and the **International Covenant on Economic, Social and Cultural Rights** (**ICESCR**) and makes it clear that this right applies to Indigenous peoples.

Since even those four settler colonial states have now changed their position on **UNDRIP**, there is international consensus that this right applies to Indigenous peoples and it can no longer be denied. Rather it now constitutes a binding principle of international law, and on top of it, Canada is bound by international treaties like **ICCPR** and **ICESCR** that enshrine the right.

The right to self-determination is the overarching umbrella right; much of its essence is then spelled out further in **UNDRIP** in regard to land rights, governance and Indigenous Free, Prior, Informed, Consent (**FPIC**). Indigenous **FPIC** and therefore Indigenous decision-making power regarding access to their lands and resources has to be recognized. The Canadian federal government's "*10 Principles*" and now **Bill C-15** undermines the fundamental principles of international law.

Canada 's position is that Indigenous Peoples must exercise our right to self-determination as Canadians and as part of Canadian society in complete violation of the right.

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

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

Federal UNDRIP Bill C-15 Preamble:

From a legal standpoint, the preamble in legislation is not legally binding, it is mainly useful for providing context or interpretation of the main operative sections of the legislation.

In the case of the preamble of **Bill C-15**, as we will explain below, the preamble is deliberately weak, prejudicial to Indigenous Peoples and Nations rights and a violation of international law standards.

While using language from select **Articles of UNDRIP** and the **2014 World Conference on Indigenous Peoples Outcome Document** the preamble remains consistent with the federal **10 Principles on Indigenous Relationships**, which are in favour of the Canadian state's attempt to domesticate and re-colonize Indigenous Peoples, but also violate international law.

The preamble of Bill C-15, describes UNDRIP as a "***Framework*** *for reconciliation, healing and peace, as well as, harmonious and cooperative relations*" that "*constitute the* ***minimum standards*** *for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada*."

The focus on "*reconciliation*" in the preamble takes away from recognition of Indigenous rights, because in law the concept of "*reconciliation*" points to justification of infringement of rights and the preamble focus does not state the **principles of international law** set out in UNDRIP **should be enshrined in the laws of Canada**. [emphasis added]

The preamble of Bill C-15 references the 2014 "***outcome document*** *of the high-level plenary meeting of the General Assembly of the United Nations known as the* ***World Conference on Indigenous Peoples****, where Canada and other States* ***reaffirm their solemn commitment*** *to respect, promote and advance the rights of Indigenous peoples of the world and* ***to uphold the principles*** *of the Declaration*." [emphasis added]

The preamble of Bill C-15 does not reference the Indigenous Peoples' preparatory processes for the World Conference on Indigenous Peoples, including the **Alta Outcome Document** from the **Global Indigenous Preparatory Conference** held in Alta, Norway, in June 2013.

The **2013 Alta Outcome Document and Joint Recommendations** should remain an important document for Indigenous communities and Indigenous Nations in Canada. The wording of the **Alta Outcome Document** was negotiated with Indigenous representatives from the seven regions of the world and included Indigenous representatives from the **North American Indigenous Peoples' Caucus** (NAIPC).

The **Joint Recommendations** from the **Alta Outcome Document** when compared to the text of the federal UNDRIP Bill C-15 shows the federal preamble is pathetically weak and biased against Indigenous Peoples.

The preamble of Bill C-15 also weakly states that "*Canada is **committed to responding** to TRC Calls to Action & Canada is **committed to responding** to MMIWG Calls for Justice*", but section 6(4) regarding **Time Limit** of Bill C-15, provides for the federal "*responses*" to be put off to the development of an "*action plan*", up to three years, should Bill C-15 become law. This is a delay tactic by the Trudeau government to keep the negotiation tables in place while trying to achieve final binding agreements. [emphasis added]

Moreover, there may be a federal election sooner than later and the Liberal Party may lose power to a Conservative government.

In fact, the effective application of sections 4, 5 and 6 of the legislative proposal will be subject to the political priorities of the government of Canada. In our experience, different political parties take drastically different approaches and positions about Indigenous rights. Therefore, it is extremely dangerous and inappropriate for this legislative proposal to be limited to procedural obligations only. Governments that are hostile to the Indigenous rights prescribed by UNDRIP will have no substantive legal obligations and Indigenous Peoples and Nations will have no effective legal remedies to ensure that rights are respected.

The preamble states that "*Indigenous peoples have **suffered historic injustices** as a result of, among other things, colonization and dispossession of their lands, territories and resources*". [emphasis added]

The preamble does not include the MMIWG Final Report conclusion that contemporary "***laws and institutions perpetuate violations of fundamental rights, amounting to a genocide against Indigenous women, girls and 2SLGBTQQIA people***". As the MMIWG final Report concluded there are **ongoing injustices** not just "*historic injustices*" as the federal preamble cites! It is important that Bill C-15 recognizes "***ongoing injustices***" in the operating sections of Bill C-15. [emphasis added]

The preamble states that the "*implementation of the Declaration must include **concrete measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples***". [emphasis added]

The preamble avoids directly recognizing "*systemic racism*" against Indigenous Peoples. A problem cited in both the Truth and Reconciliation Commission and the MMIWG Inquiry.

Again, while the preamble generally recognizes that "***all doctrines, policies and practices based on or advocating the superiority of peoples or individuals** on the basis of national origin or racial, religious, ethnic or cultural differences **are racist,***

scientifically false, legally invalid, morally condemnable and socially unjust." The preamble fails to explicitly repudiate the **colonial Doctrine of Discovery** and **Terra Nullius** as the Final Report of the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission Calls to Action recommended. [emphasis added]

The preamble states the "*Government of Canada* ***rejects all forms of colonialism*** *and is* ***committed to advancing relations with Indigenous peoples*** *that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights*." [emphasis added]

The preamble does not state that **Canada should reject colonialism** and agree to **decolonize Canada's laws and policies based on the fundamental respect for the international right of self-determination of Indigenous Peoples**, according to international human rights standards and include ecological and equitable development principles, Indigenous knowledge systems, laws, relationships to land, world views, technologies, innovations and practices and, of course, **recognition and affirmation of Aboriginal Title and Rights to the lands that the Creator has given each of our nations and which Indigenous Nations have inhabited since time immemorial**.

The preamble states that the "Government of Canada **recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government**. [emphasis added]

The preamble does not state that section 35 of the Canadian constitution must be made to comply with Article 1 of the **International Covenant on Civil & Political Rights** and the **International Covenant on Educational, Social & Cultural Rights** and Article 3 of UNDRIP and all of the colonial doctrines and laws must be revoked, thereby implementing the Indigenous right to freely determine our political status and freely pursue our economic, social and cultural development.

The preamble states that the "*Government of Canada is* ***committed to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous peoples, to achieve the objectives of the Declaration***." [emphasis added]

The preamble does not use stronger language like taking effective measures – including legislative, policy and administrative measures with the Free, Prior, Informed, Consent (FPIC) of Indigenous Peoples. In fact, throughout the preamble, there is no mention of FPIC, only the weaker colonial language of control and management, "*consultation and cooperation*".

The preamble states the "*Government of Canada is **committed to exploring**, in consultation and cooperation with Indigenous peoples, **measures related to monitoring, oversight, recourse or remedy or other accountability measures** that will contribute to the achievement of those objectives*." [emphasis added]

The preamble states the "**Government of Canada acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority**. [emphasis added]

This part of the preamble fits well with Prime Minister Justin Trudeau's description of "*Indigenous government's*" as being "*fourth level of government in Canada*".[9] So it's telling that the preamble does not commit the government of Canada to recognition of Indigenous rights, Indigenous laws and legal traditions in accordance with principles of international law.

The preamble states the "*Government of Canada **welcomes opportunities to work cooperatively** with those governments, Indigenous peoples and other sectors of society **towards achieving the objectives of the Declaration***." [emphasis added]

This is why the preamble states that the "Declaration is **affirmed as a source for the interpretation of Canadian law**" and that the **"*protection of Aboriginal and treaty rights — recognized and affirmed by section 35 of the Constitution Act, 1982 — is an underlying principle and value of the Constitution of Canada***." [emphasis added]

The preamble states "there is an **urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements**, and those treaties, agreements and arrangements **can contribute to** the implementation of the Declaration. [emphasis added]

The preamble states that the "***respect for human rights, the rule of law and democracy are underlying principles of the Constitution of Canada** which are interrelated, interdependent and mutually reinforcing and are also recognized in international law*." [emphasis added]

[9] At a public event organized by "*The Economist*" magazine in Toronto in the summer of 2016, the interviewer asked the Prime Minister how his government was going to liberalize and deregulate inter-provincial trade within Canada. Trudeau responded: "*The way to get that done is not to sit there and impose, the way to have that done is to actually have a good working relationship with the Premiers, with municipal governments, with Indigenous leadership, because **Indigenous government's are the fourth level of government in this country***." [emphasis added] [Source: http://www.cpac.ca/en/programs/headline-politics/episodes/47793606]

The preamble states that the "**measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples** and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge. [emphasis added]

The text of the legislation itself, does not reflect the scope of the preamble, some examples are:

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

- The preamble states the urgent need to respect and promote the inherent rights of Indigenous Peoples, including our rights to our lands, territories and resources, but then contains no substantive provisions about this in the legislation.

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

Finally, there is nothing in the **Bill C-15** that indicates that the actions of Canada under this Bill will be subject to international review by the United Nations. If the government of Canada wants to give the appearance of meeting minimum standards, then there needs to be an external body to monitor its actions because Canada continues to show it cannot be trusted to monitor and report on itself.

The Honour of the Crown is a myth!

ANNOTATED FEDERAL BILL C-15
UNITED NATIONS
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Federal Bill C-15	**Indigenous Issues Avoided**
Short Title **1** This Act may be cited as the *United Nations Declaration on the Rights of Indigenous Peoples Act*.	The title of Bill C-15 reflects the intent of the Bill, which is not to adopt UNDRIP in the laws of Canada otherwise the Bill would have been titled the "*Adoption of the UNDRIP Act*" or a similar title.
Definitions **2 (1)** The following definitions apply in this Act. **Declaration** means the United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007 and that is set out in the schedule.	The UN General Assembly passed a resolution adopting a third watered down version of UNDRIP as documented in the book "**Indigenous Nations' Rights in the Balance,** *An Analysis of the Declaration on the Rights of Indigenous Peoples,* **By Charmaine White Face, *Zumila Wobaga***, 2013, Living Justice Press."
Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*.	This is an indirect reference to the colonial, racist *Indian Act* and related federal legislation affecting Indians, Indian Lands, First Nations & Indigenous Peoples, which are maintained by Bill C-15, not the broader meaning of "*Indigenous Peoples*" in a global sense beyond the borders of the Canadian state. An important term to dismiss is Indigenous peoples "*of Canada*" as, of course, Indigenous Peoples existed long before Canada was confederated, and section 35(2) does not define aboriginal peoples in Canada, it defines Indigenous Nations as meaningless descriptions of "*Indians*" in the *Indian Act*, as an example, and the list "*includes*" (meaning non-exhaustive) and therefore could also include more meaningful terms (such as

	our own linguistic descriptions of ourselves).
Minister, for the purposes of any provision of this Act, means the federal minister designated as the Minister for the purposes of that provision under section 3.	There is no lead Minister identified as section 3 the federal Cabinet can assign any Minister *"for the purposes of any provision of this Act*."
Rights of Indigenous peoples **(2)** This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.	The wording of this section of the legislation completely domesticates the UNDRIP commitments within the borders and confines of the Canadian common law. This is very similar to the accomplishment made of the 2017 effort to have the "*10 Principles*" act as a proxy for the UNDRIP, with the Principles simply being a restatement of the Canadian common law limitations of section 35 rights. To be clear, First Nations should not support this legislative bill as it subjugates UNDRIP rights to the common law interpretation of section 35(1) of the *Constitution Act, 1982* which is heavily based on the **colonial Doctrine of Discovery**. In fact, the federal **'Inherent Right' Policy** states "*The inherent right of self-government **does not include a right of sovereignty in the international law sense**…implementation of self-government should enhance **the participation of Aboriginal peoples in the Canadian federation***". [emphasis added]
Designation of Minister **Order designating Minister** **3** The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of any provision of this Act.	There is no lead Minister identified as section 3 the federal Cabinet can assign any Minister *"for the purposes of any provision of this Act*." There are now three main Ministers on Indigenous issues: Minister of Crown-Indigenous Relations; Minister of Indigenous Services and Minister of Northern Affairs, but other federal Ministers are designated by the

	federal Cabinet or in federal legislation to be responsible for various Indigenous issues.
Clarification **(3)** Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.	This section is circumspect, it is not an enforceable term in the legislation. It is a qualification.
Designation of Minister **Order designating Minister** **3** The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of any provision of this Act.	There is no lead Minister identified as section 3 the federal Cabinet can assign any Minister *"for the purposes of any provision of this Act*." There are now three main Ministers on Indigenous issues: Minister of Crown-Indigenous Relations; Minister of Indigenous Services and Minister of Northern Affairs, but other federal Ministers are designated by the federal Cabinet or in federal legislation to be responsible for various Indigenous issues.
Purpose of Act **Purpose** **4** The purpose of this Act is to **(a)** affirm the Declaration as a universal international human rights instrument with application in Canadian law.	Bill C-15 merely "*affirms*" UNDRIP but does not "*adopt*" or "*approve*" UNDRIP to be implemented in the "*laws of Canada*" while respecting international standards of law.
(b) provide a framework for the Government of Canada's implementation of the Declaration.	The government of Canada already has a section 35 domestic law "*Reconciliation Framework*" for discussions and negotiations with Indigenous Peoples and Nations (Recognition Tables, Modern Treaty Tables, Self-Government Tables & federal laws creating National Fiscal & Land Institutions and there is a federal plan for a National Infrastructure Institute) that will be used as an UNDRIP "*Framework*" for "*implementation of the Declaration*" if **Bill C-15** becomes law. As the **Bill C-15** preamble states, the federal intent is to ensure the "*Declaration is affirmed as a* ***source for the interpretation of Canadian law****" and "protection of Aboriginal and treaty rights*

	*— **recognized and affirmed by section 35 of the Constitution Act, 1982** — is an underlying principle and value **of the Constitution of Canada***", which is why the "*Government of Canada **acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority***" and the "*Government of Canada **welcomes opportunities to work cooperatively with those governments, Indigenous peoples and other sectors of society towards achieving the objectives of the Declaration***." The ultimate goal of the federal "*Reconciliation Framework*" is to convert Indigenous Peoples and Nations into 4th level ethnic "*Indigenous governments*" lower in status than federal, provincial or municipal governments. The preamble does not commit the government of Canada to recognition of Indigenous rights, Indigenous laws, Indigenous legal traditions or principles of international law, the federal government has legislatively created the term "*Indigenous Governing Bodies*", which can mean either *Indian Act* Band Councils, Land Claims Bodies or "*Self-Governing First Nations*" to accommodate the federal transitioning process.
Measures for Consistency of Laws and Achieving the Objectives of the Declaration **Consistency** **5** The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of	The difficulty remains that even if this section of the legislative proposal could ground an action by Indigenous Nations against the government of Canada for failing to take administrative steps to ensure that the laws of Canada are consistent with UNDRIP, there could only be procedural remedies available. A court

Canada are consistent with the Declaration.	could not "*order*" the government of Canada to adopt legislation that conforms to UNDRIP based on this section, nor could it invalidate a federal law for being inconsistent with UNDRIP based on this section. Again, the "*aspirational*" nature of UNDRIP is reinforced by this legislation, with at most, limited procedural remedies available to Indigenous Peoples and Nations. Moreover, most commentators wonder how the Government can make this section work, especially considering the separation of powers between the executive, legislature, and judiciary. We already understand that one of the main collaborative functions of the Trudeau government was held through a cabinet working committee of a half of a dozen Ministers who met with various delegations to discuss issues and concerns for "*recognition of rights*" in 2016-2018. However, beyond setting the agenda for legislative review, this review will require several mandates to finalize the large scope of work.
Action plan **6 (1)** The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration.	This section of the **Bill C-15** gives the government of Canada a dominant role in interpreting UNDRIP "*principles*" in relation to federal laws, since under Canada's constitutional division of federal and provincial powers, the provincial governments have a veto in subject areas that may affect their jurisdiction. Moreover, the reference to "*consultation and cooperation with the Indigenous peoples of Canada*" has meant for the past five years that the Trudeau government uses the three National Indigenous Organizations and three

	National Leaders, though what is called "*Bilateral Mechanisms*", which means three federal-Indigenous Cabinet Sub-Committees, where the federal government controls the funding, pen and agenda. This section of **Bill C-15** is also in violation of these two UNDRIP Articles: "***Article 18*** *- Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves* ***in accordance with their own procedures****, as well as to maintain and develop* ***their own indigenous decision-making institutions****."* *"**Article 19** - States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions* ***in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them***." [emphasis added] **Bill C-15**, in its preamble or in this section, makes no mention that the government of Canada in "*preparing and implementing*" an "*action plan*" shall obtain the **Free, Prior, Inform Consent of Indigenous Peoples and Nations** "*in accordance with their own procedures" and "their own indigenous decision-making institutions*". Reliance on National Indigenous organizations is to the detriment of standards such as Free, Prior and Informed, Consent of Indigenous Peoples

	and Nations. Processes with "*national*" groups should focus solely on Indigenous institutions created within Indigenous legal traditions, important procedural objectives, such as capacity transfer and decolonization through rejecting colonial intrusions such as the *Indian Act* or other federal legislation using section 91(24) authority.
Content **(2)** The action plan must include **(a)** measures to	
(i) address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons.	As previously noted above, the preamble avoids directly recognizing "s*ystemic racism*" against Indigenous Peoples. A problem cited in both the **Truth and Reconciliation Commission** and the **MMIWG Inquiry**. Canada is a signatory to the **International Convention for the Elimination of all forms of Racial Discrimination** is a binding international treaty, which Canada ratified in October 1970. Yet **Bill C-15** makes no mention of "*systemic racism*".
(ii) promote mutual respect and understanding as well as good relations, including through human rights education; and	
(b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.	**Bill C-15** either in the preamble of this section does not cite **Article 1(1)** of the **International Covenant on Civil and Political Rights** (**ICCPR**), the **International Covenant on Economic, Social and Cultural Rights** (**ICESCR**), the **Convention on the Elimination of Racial Discrimination** (**CERD**) or the monitoring and oversight role of the United Nations Human Rights bodies in implementing these International Conventions, which are the foundation of the international right of self-determination of Indigenous Peoples.

Other elements **(3)** The action plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan.	see above comment.
Time limit **(4)** The preparation of the action plan must be completed as soon as practicable, but no later than three years after the day on which this section comes into force.	The three-year delay in completing the "*action plan*" provides the government of Canada more time to seek final Modern Treaty or Self-Government agreements at the various tables across Canada and as a minority government, to avoid debate with opposition parties, provinces and industry on the content of a federal UNDRIP "*action plan*".
Tabling in Parliament **(5)** The Minister must cause the action plan to be tabled in each House of Parliament as soon as practicable after it has been prepared.	
Action plan made public **(6)** After the action plan is tabled, the Minister must make it public.	
Report to Parliament **Annual report** **7 (1)** Within 90 days after the end of each fiscal year, the Minister must, in consultation and cooperation with Indigenous peoples, prepare a report for the previous fiscal year on the measures taken under section 5 and the preparation and implementation of the action plan referred to in section 6.	As in B.C. with **Bill 41 DRIPA**, This section of **Bill C-15** provides that the government of Canada will control the pen as to the content of the report to Parliament on the federal measures taken to "*prepare and implement an action plan to achieve the objectives of the Declaration*." Conflicts with land defenders and water protectors will likely not be included in Reports to Parliament, as was the case with the **B.C. Bill 41 DRIPA 2019/2020 Report** to the B.C. Legislature, which excluded any mention of the violation of **UNDRIP Article 10** regarding forced removal of Indigenous Peoples from their territories, as RCMP invaded and forcibly removed the Wet'suwet'en Hereditary

	Chiefs from their own territory in 2019 and 2020.
Tabling in Parliament **(2)** The Minister must cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed.	
Referral to committee **(3)** The report stands permanently referred to the committee of each House of Parliament that is designated or established to review matters relating to Indigenous peoples.	No committee is designated in Bill C-15 "*to review matters relating to Indigenous peoples*", but it should be remembered that the Parliament controls who is called as a witness to testify before any committee of Parliament, and it is unlikely that many grassroots Indigenous Peoples and Nations will be invited to testify if past history is any guide. It will be the Assembly of First Nations, Chiefs' Organizations and Chiefs, or their designates, who will likely be invited to testify before Parliamentary committees regarding matters related to **Bill C-15** implementation, or lack thereof.
Report made public **(4)** After the report is tabled, the Minister must make it public.	
SCHEDULE (Subsection 2(1)) **United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly**	

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

APPENDIX 1

Assembly of First Nations Draft Resolution

#6 Conditions to Supporting Bill C-15, Federal Legislation Regarding the *United Nations Declaration on the Rights of Indigenous Peoples*

Blocked by AFN from being tabled before the Chiefs-in-Assembly for debate on December 9, 2020

D R A F T R E S O L U T I O N # 0 6 / 2 0 2 0

AFN Annual General Assembly, December 8 – 9, 2020

TITLE:	Conditions to Supporting Bill C-15, Federal Legislation Regarding the *United Nations Declaration on the Rights of Indigenous Peoples*
SUBJECT:	United Nations Declaration on the Rights of Indigenous Peoples, Human Rights
MOVED BY:	
SECONDED BY:	

WHEREAS:

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

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

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

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

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

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

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

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

viii. Article 26 (2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

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

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

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

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

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

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

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

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

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

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

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

D. Further to the Alta Outcome Document of the Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly, known as the World Conference on Indigenous Peoples held in Alta, Norway on June 10-12, 2013, Indigenous Peoples representing the 7

global geo-political regions including representatives of the global women's caucus and the global youth caucus developed collective recommendations to the State governments committed to developing National Action Plans to implement the UN Declaration.

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

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

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

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

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

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

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

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

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

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

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

   iii. monitor progress through public annual reporting.

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

J. First Nations in BC have consistently articulated that Bill 41 needs to be the baseline for the development of similar federal legislation and any federal legislation introduced must not undermine the work undertaken in BC. There are First Nations in BC and across Canada who do not agree with

Canada's Comprehensive Land Claims or 'Inherent Right' policies or processes and seek to have UN Declaration Articles 26 to 29, which speak to the restoration of, or restitution for, Indigenous lands, territories and resources in Canada, implemented.

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

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

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

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

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

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

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

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

   ii. disregarding Indigenous laws and legal traditions;

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

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

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

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

   vii. the erosion of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles.

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

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

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

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

1. Support amendments recommended by First Nations, as conditions for support of Bill C-15 *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* (Bill C-15) to ensure that the purpose of Bill C-15 is to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), that will not reinforce the status quo and rely on other means or processes to implement the Declaration, as the current version of Bill C-15 provides in sections 1 through 7.
2. Call on the Government of Canada, the House of Commons and the Senate to:
    a. ensure Bill C-15 is consistent with Bill 41, *Declaration on the Rights of Indigenous Peoples Act* and does not detract or undermine any work that is being undertaken at provincial or regional levels
    b. amend Bill C-15 to accommodate First Nations in BC and across Canada who do not agree with the BC Treaty Negotiations Policy, Canada's Comprehensive Land Claims or 'Inherent Right' Policies or Processes
    c. amend Bill C-15 to have UN Declaration Articles 26 to 29, which speak to the restoration of, or restitution for, Indigenous lands, territories and resources implemented in Canada, explicitly included in an amended section 2(2) of Bill C-15 regarding Indigenous Peoples' territorial jurisdiction and Indigenous law, which are the foundations of self-determination.
    d. ensure Bill C-15 explicitly repudiates the Doctrine of Discovery and the doctrine of terra nullius as recommended by the 1996 Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission in an amended section 2(2) of Bill C-15.
3. Direct the Assembly of First Nations (AFN) National Chief and Executive Committee to work with the AFN Chiefs Committee on Lands, Territories and Resources to develop amendments to Bill C-15 for

consideration by First Nations, followed by presentation to the Government of Canada as conditions for supporting Bill C-15 before the Bill achieves royal assent.