

# UNDRIP: Lands, Territories & Resources and the Indigenous Forests in Canada

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# Trudeau's Key 2015 Indigenous Platform Promises

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

# Trudeau's Key 2015 Indigenous Platform Promises

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

# AFN-Canada Memorandum of Understanding on Joint Priorities



# Canada-AFN MOU – Shared Priorities

- **June 2017** - The Prime Minister and the AFN National Chief signed a **Memorandum of Understanding (MOU) on Shared Priorities**.
- **3. work in partnership on measures to implement the United Nations Declaration on the Rights of Indigenous Peoples, including co-development of a national action plan and discussion of proposals for a federal legislative framework on implementation.**
- **6. work jointly to decolonize and align federal laws and policies with the United Nations Declaration on the Rights of Indigenous Peoples and First Nations' inherent and Treaty rights.**
- **7. dialogue and planning to identify priorities and measure progress to close the socio-economic gap between First Nations and other Canadians.**

# **Right of Indigenous Self-Determination Being Hijacked by Trudeau!**

- **The most important right recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the right of Indigenous Peoples to self-determination.**
- **The right to self-determination is the overarching umbrella right; much of its essence is then spelled out further in UNDRIP, in regard to land rights, governance and Indigenous free prior informed consent (FPIC).**
- **Indigenous FPIC and therefore Indigenous decision-making power regarding access to their lands and resources has to be recognized if UNDRIP implementation is real.**

# Trudeau Government Operates in Secret Through the Following processes:

- **A Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples** – Chaired by Justice Minister & Attorney-General Jody Wilson-Raybould, but includes the Ministers of Indigenous-Crown Relations, Indigenous Services, Fisheries, Oceans and the Canadian Coast Guard, Health, Families, Children and Social Development and **Natural Resources**. Supposedly, this working-group is to “de-colonize” Canada’s laws & policies.

# Trudeau Government Operates in Secret Through the Following processes:

- **10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples** – Released without consulting First Nation Chiefs or communities, including the National Indigenous Leaders who are supposedly the Trudeau government's partners.
- **Dissolving/Splitting Department of Indian Affairs & Northern Development into two new departments** – Announced without consultation with First Nation Chiefs or communities, including the National Indigenous Leaders who are supposedly the Trudeau government's partners.
- **Establishment of Recognition of Rights and Self-Determination Negotiation Tables across Canada** – These were initially called “exploratory tables”. The federal government initially kept it secret who is involved in the “discussions”, they have now made the list public, but not what is being discussed at these tables, reportedly the outcomes from these tables will contribute to the planned policy and legislative “Framework” affecting Indigenous Peoples.



# PM Announces Legislative “Framework” for “Recognition & Implementation” of Rights



# Recognition and Implementation of Rights Framework

- Announced on February 14, 2018, Liberal government is proceeding to introduce a Bill into Parliament in 2018 and PM wants it to become law before the next federal election in 2019, regardless of the details, this legislation will have major impacts on the lives of this generation of First Nation Peoples and generations to come.
- The core of the planned federal “legislative framework” is to transition bands currently under the **Indian Act** into “self-government” agreements, or Comprehensive Claims Agreements/“Modern Treaties”, which the Trudeau government is falsely calling “self-determination”.

# Budget 2018

- The federal government is using two Fiscal Relations processes—the federal funding—as the carrot, or the stick approach: 1) to get **Indian Act** bands to transition into self-government agreements; and 2) groups who are either negotiating or implementing self-government agreements or “Modern Treaties” are federally recognized as “Indigenous Governments” are to be induced to complete agreements and implement the methods and funding formulas for governance and service delivery operations.
- So, when Prime Minister Justin Trudeau—or his Ministers—say the coming federal “framework” is to “recognize and implement” Indigenous “rights” it means as unilaterally defined by federal self-government and comprehensive claims policies.

## Indian Act Bands

- The federal government considers **Indian Act** band councils “non-governing” because:
- Many of Canada’s First Nation communities are still governed by the **Indian Act**, and are referred to as Bands. This means that their reserve lands, monies, other resources and governance structure are managed by the provisions in the **Indian Act**.

# DRAFT

## Self-Government Fiscal Policy

- For the purpose of this policy “**Indigenous Governments**” are defined as those Indigenous Governments operating under various self-government regimes, including:
  - ***7.1. A comprehensive land claim agreement which includes a comprehensive self-government component;***
  - ***7.2. A comprehensive agreement on self-government; or***
  - ***7.3. A legislated comprehensive self-government arrangement.***

# Dissolving DIAND & Creating Two New Departments

- Budget 2018 clarifies that with the dissolving of DIAND the “Framework” is divided into two parts: 1) **The Department of Indigenous Services** under Minister Jane Philpott for “Achieving Better Results” for funding programs and services for bands still under the **Indian Act**, until the **Indian Act** bands transition to a new fiscal relationship and the Department of Indigenous Services will cease to exist once all bands are converted into federally recognized “Indigenous Governments”; and
- 2) **The Department of Crown-Indigenous and Northern Affairs** under Minister Carolyn Bennett for federal “Rights Recognition” and transfer payments, plus “own source revenue” through self-government agreements, “Modern Treaties” and fiscal arrangements, what the Trudeau government is falsely calling “self-determination”.

# “Reconstituting” Indigenous Nations

- Through the coming federal “framework” a key objective is keeping costs down by encouraging bands to merge to “reconstitute their nations” and support cheaper economies of scale, so there is a section in Budget 2018 called “Helping Indigenous Nations Reconstitute”.
- ***Through Budget 2018, the Government proposes to provide \$101.5 million over five years, starting in 2018–19, to support capacity development for Indigenous Peoples. Funding would be made available to Indigenous groups to support activities that would facilitate their own path to reconstituting their nations.*** [emphasis added]

# Reconciliation Framework Budget

- As for the planned federal “Reconciliation Framework”, Budget 2018 identifies \$615 Million over five years for the National Indigenous Organizations “Bilateral Mechanisms”, transitioning into the new fiscal relationship and collecting the research and data for the operating costs of federally recognized “Indigenous Governments”.



# Background to PM's Rights Recognition “Reconciliation Framework”

- The federal “framework” comes from a proposal for federal and provincial “recognition legislation” contained in a 805 page book called the “Governance Toolkit” prepared by Justice Minister Jody Wilson-Raybould and her husband while she was AFN-BC Regional Chief in 2013.
- Jody’s 2013 proposal was based on her experience in working with then Senator Gerry St. Germaine on **Senate Bill S-212** called “*An Act providing for the recognition of self-governing First Nations of Canada*”. The Bill died in 2013.
- It seems along the lines of **Bill S-212**, the Trudeau government plans to elevate the 1995 so-called “Inherent Right” self-government policy (see Political Relations Chart) into federal law and financially facilitate Indian Act bands into self-government agreements or “modern Treaties”, along with the “Indigenous Governments” already created through self-government agreements and “modern treaties”.

# Crown-First Nations Relations Chart

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Summary of Political Relations up to 1996

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**Aboriginal Rights & Title**  
-granted from the Creator  
-complete jurisdiction & authority  
-inter-tribal treaty-making

**Royal Proclamation of 1763**  
-recognized Indian title & rights  
-recognized Indian jurisdiction  
-establishes procedure for treaty making  
between Indian nations and the Crown

**British North America Act, 1867**  
-s.91(24): laws respecting "Indians & lands reserved for Indians" are a federal responsibility

**Indian Act, 1876**  
-federal 91(24) responsibility used to infringe on Aboriginal jurisdiction unilaterally  
-interferes with inherent right  
-contradicts treaties

**Resisting Assimilation, 1876-1982**  
-First Nations continue to exercise authority and to exist as Nations, but federal & provincial laws continue to interfere  
-treaty making continues, but is discounted by Canada

**Constitution Act, 1982**  
-s.35(1): "the existing Aboriginal & Treaty rights of the Aboriginal peoples of Canada" are "recognized and affirmed"

**Uncertainty, 1983-1996**  
-There is no agreement on the existence of "existing" Aboriginal & Treaty rights  
-There is no agreement on the nature and scope of those rights

# Crown-First Nations Relations Chart

Summary of Political Relations up to 1996.

## "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 delimitation
- 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

# UNDRIP – 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.
- 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.
- 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.

## UNDRIP – 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.**

# UNDRIP – 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.**
- **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.**

# UNDRIP – 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.**
- **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.**
- **3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.**

# **Federal Review of Environmental & Regulatory Processes & Legislation**

- Environmental Assessment Processes – CEAA 2012**
- Fish Habitat Protection – Fisheries Act**
- National Energy Board Modernization - Structure, Role, Mandate**
- Navigation [Waters] Protection Act**
- Bill C-69 - An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts**





# International Trade Agreements

- **EXISTING:**
  - World Trade Organization (WTO)
  - North America Free Trade Agreement (NAFTA)
- **PROPOSED**
  - Trans-Pacific Partnership (TPP)
  - Bilateral Trade Agreements

# Trans-Pacific Partnership

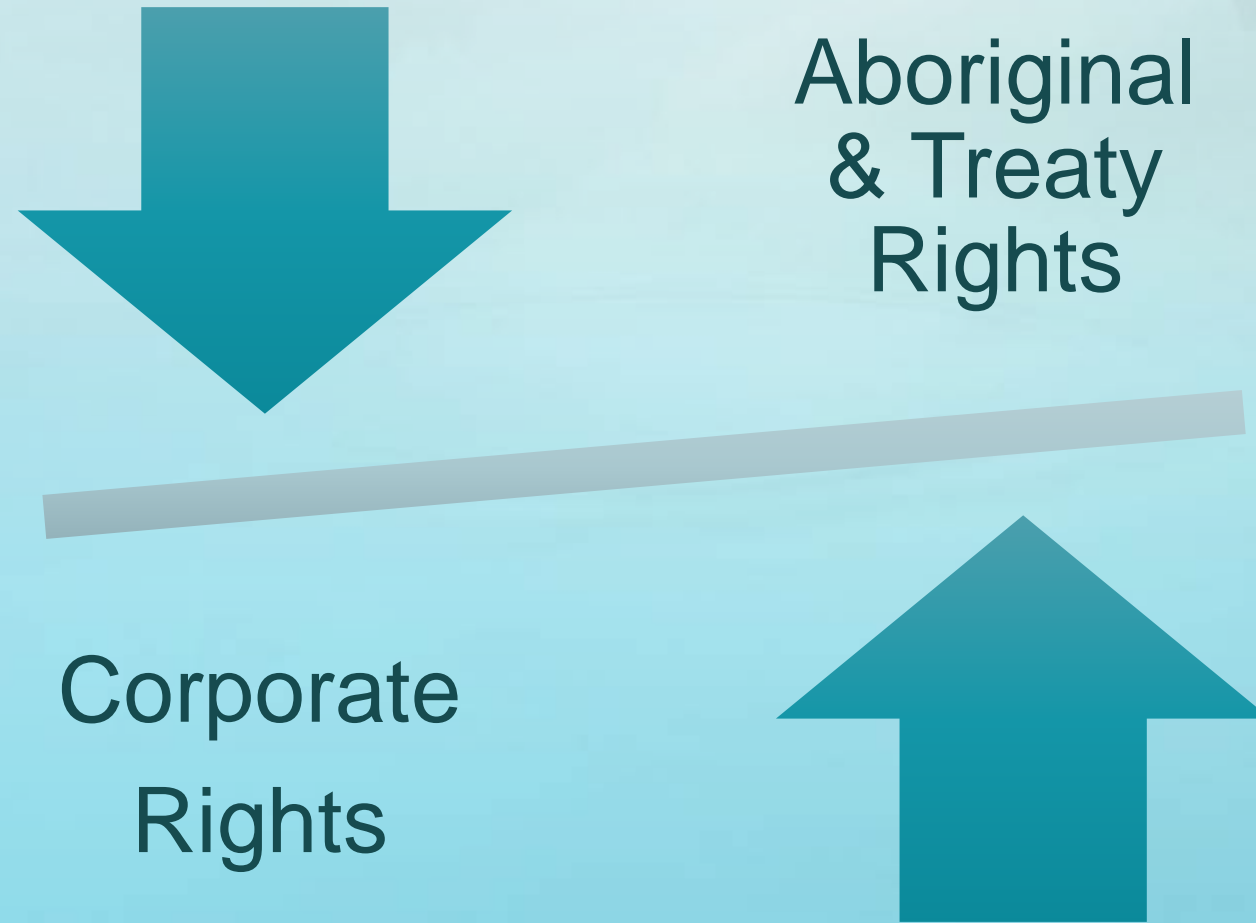


# Purpose of Trade Agreements

- Give access and benefits to our land to the international corporation
- Sacrifice State sovereignty to corporate power
- Make Indigenous rights subject to international trade agreements
- What can we do?
- No more free trade with indigenous lands and resources.



# Economic Leverage



# Jim Carr, Federal Minister of Natural Resources – Threatens Force on Pipelines



- “If people choose for their own reasons not to be peaceful, then the government of Canada, through its defence forces, **through its police forces, will ensure that people will be kept safe,**”
- “We have a history of peaceful dialogue and dissent in Canada. I’m certainly hopeful that that tradition will continue. If people determine for their own reasons that that’s not the path they want to follow, then **we live under the rule of law.**” Dec. 1, 2016

# Conclusion

- Trudeau government is developing a “**Canadian Definition**” of UNDRIP to re-colonize Indigenous Peoples with racist, colonial laws and termination policies.
- Trade Agreements like NAFTA will impact on Indigenous Inherent, Aboriginal & Treaty Rights because of federal interpretations of the constitution.
- Trudeau government hasn't mentioned “**lands, territories & resources**”, federal land claims & self-government policies are written to help the provinces clear Aboriginal Title & Rights and place Federal & Provincial jurisdiction over Indigenous Peoples.
- In Canada, for Indigenous Peoples' management, use and conservation of Indigenous Forests off-reserve will require fundamental changes to federal & provincial policies, laws and operational practices for the relevant UNDRIP Articles to be implemented. The Federal Government has a fiduciary and Treaty responsibility and obligation to assist Indigenous Peoples in this regard.