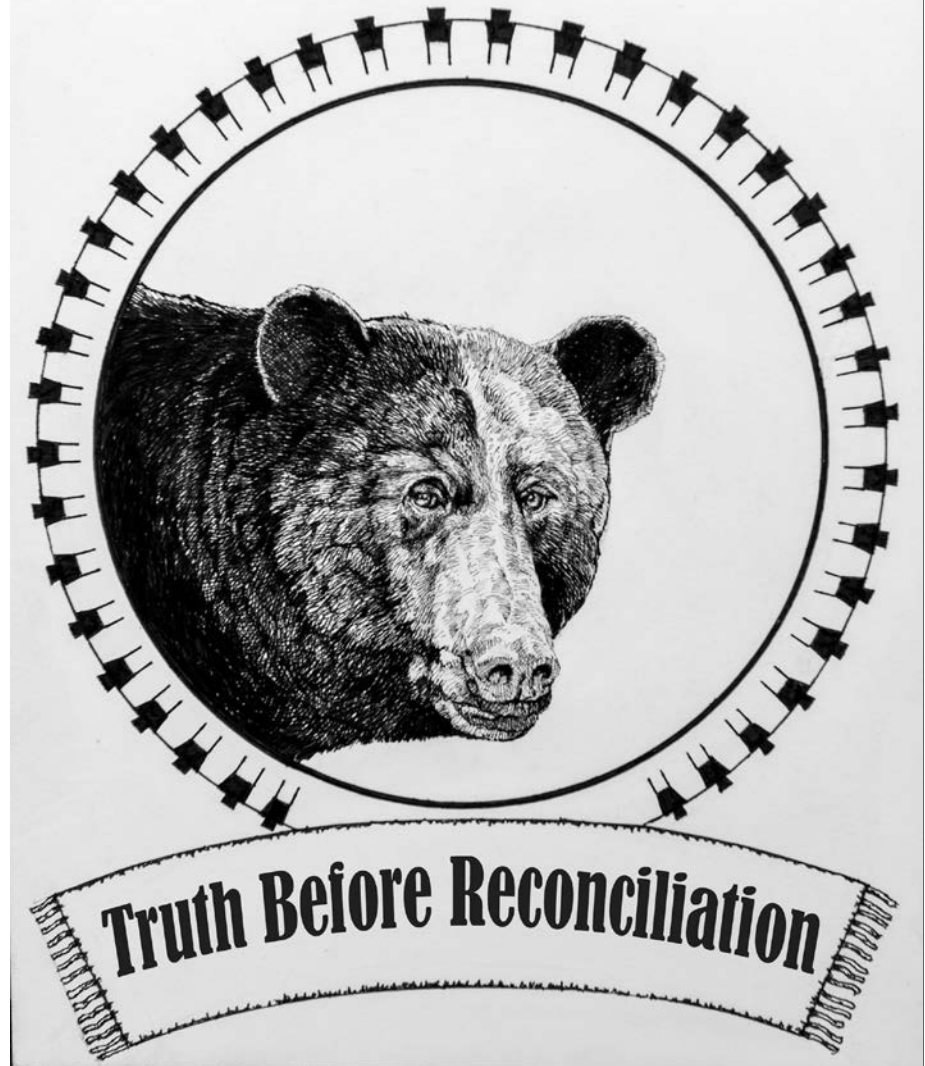


CANDRIP (Bill C-15)

Justice Canada's Draft Action-Plan

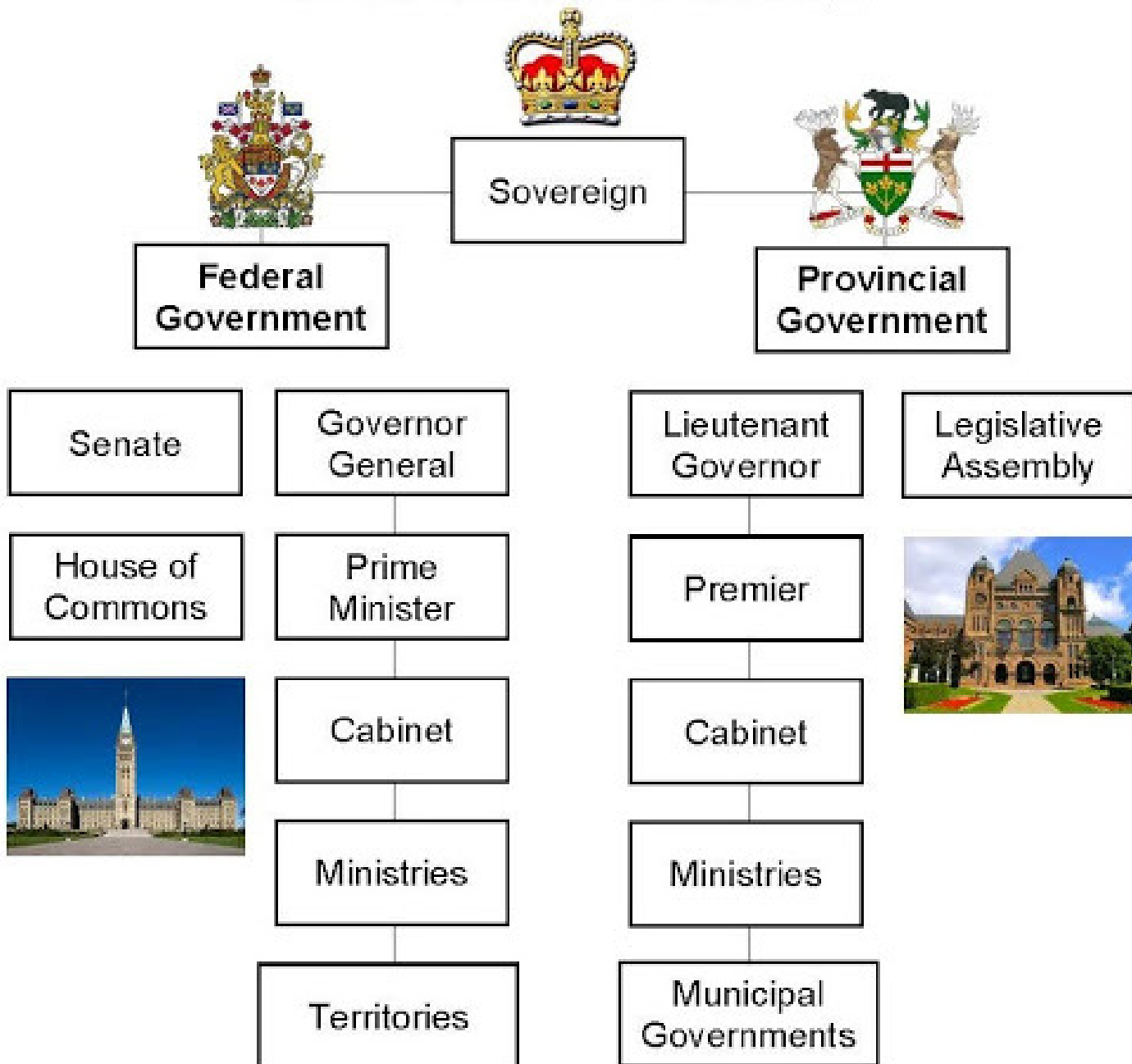
By Russ Diabo
March 29, 2023



Parts of Presentation

- **1. Introduction of Issues.**
- **2. Content of Bill C-15.**
- **3. Summary of Justice Canada's Draft Action-Plan (Federal Departmental Measures/Priorities).**
- **4. Conclusion.**

Government in Canada



Constitutional Division of Federal & Provincial Powers



KEY UNDRIP ARTICLES

UNDRIP – Articles 3 & 4

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.

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.**
- **NOTE: Self-Determination is an international Right of Peoples, while Self-Government is defined in a Federal Policy to transition Bands into Municipal Type Governments with “Natural Person Powers” to be a “legal person”, a corporation in law.**

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 46.1

- **Article 46**

- **1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.**

UNDRIP Was Watered Down at UN

- **There were three main drafts of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).**
- **1994, the Original Text version.**
- **2006, a second amended version of UNDRIP was the Human Rights Council version.**
- **2007, the final version of UNDRIP is the United Nations General Assembly version, passed by the UN General Assembly after changes were made by the African Union, changes that were never properly presented to Indigenous Peoples globally.**
- **It's 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.**

Indigenous Nations Rights in the Balance

An Analysis of the Declaration on the Rights of Indigenous Peoples

- Charmaine White Face is an Oglala Tituwan Oceti Sakowin writer, scientist and great-grandmother. She wrote an in-depth analysis of the UNDRIP based on her experiences at the UN debates called: Indigenous Nations Rights in the Balance published by Living Justice Press, St. Paul, MN. She can be reached at cwhiteface@gmail.com.

INDIGENOUS NATIONS' RIGHTS IN THE BALANCE

An Analysis of The Declaration
on the Rights of Indigenous Peoples



CHARMAINE WHITE FACE,
ZUMILA WOBAGA

Canada's Definition of UNDRIP

- In order to understand the Trudeau governments 2015, promise to adopt the **United Nations Declaration on the Rights of Indigenous Peoples**, you need to refer back to the beginning of the federal Liberal government's mandate.
- In 2016, at the *United Nations Permanent Forum on Indigenous Issues* the Minister of Indigenous Affairs, Carolyn Bennett gave qualified NOT unqualified support to endorsing UNDRIP.
- Minister Carolyn Bennett's statement is the basis for the Canadian domestic definition of UNDRIP. Minister Bennett told the 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 fulfil all of the principles of the declaration, including **"free, prior and informed consent."** We see modern treaties and self-government agreements as the ultimate expression of free, prior and informed consent among partners."* **Source:** Carolyn Bennett to UNPFII May 10, 2016. [emphasis added]

Canada's Definition of UNDRIP

- Minister Bennett's 2016 statement confirms that the **federal Inherent Right and Comprehensive Land Claims Policies are the federal basis for implementing the "objectives" of UNDRIP**, in accordance with the constitutional divisions of federal and provincial powers.
- Jody Wilson-Raybould, then Minister of Justice & Attorney-General, was also at the 2016 UNPFII and reinforced Minister Bennett's position on endorsing UNDRIP:
- *"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."* [emphasis added]

Canada's Definition of UNDRIP

- This is why the *Crown-Indigenous Relations and Northern Affairs Canada Department* annually tracks the:
- *Number of communities where treaties, self-government agreements and other constructive arrangements have been concluded. SOURCE: CIRNAC 2022-2023 Departmental Plan p. 19*
- To be clear, this annual results indicator is measuring the number of **Modern Treaties, Self-Government Agreements and First Nations with fiscal by-laws or laws and First Nations with established land codes**. This is the **federal Reconciliation Framework**.

Canada's Definition of UNDRIP

- **To implement Canada's definition of UNDRIP and to fulfill the Liberal governments promise to “re-engage in a renewed nation-to-nation process with Indigenous Peoples”, in December 2015, Prime Minister Trudeau announced a Whole-of-Government, Two-Track approach to Indigenous Reconciliation followed by his government issuing 10 Principles for Indigenous Relationships and replacing the Department of Indian Affairs with the two new Departments of Indigenous Services Canada and the Crown-Indigenous Relations and Northern Affairs.**

Canada's Definition of UNDRIP

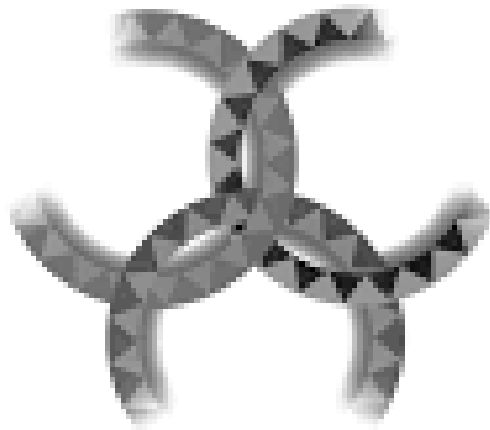
- In the federal Two-Track process, the role of Indigenous Services Canada is to prepare First Nations for the devolution of programs and self-government through capacity building, including the 10-Year Funding Grants.
- The role of Crown-Indigenous Relations is to implement existing self-government agreements, including modern treaties and the alternative to the Indian Act legislative arrangements—through the national land and Financial Management Agreement institutions—and to continue this approach regarding the negotiation of Inherent and Treaty rights through the IRSG and Comprehensive Land Claims Policies.
- The 2022 Annual Report by the Minister of Justice & Attorney-General, David Lametti, sets out the context of how the federal government interprets UNDRIP and the actions the federal departments are taking towards implementing the federal definition of UNDRIP.

Canada's Definition of UNDRIP

- As the Department of Justice (DoJ) **2022 Annual Report** shows, the DoJ has organized the **UNDRIP articles** into the following thematic areas:
- **Equality and non-discrimination**
- **Self-determination, self-government and recognition of treaties**
- **Lands, territories and resources**
- **Environment**
- **Civil and political rights**
- **Participation in decision-making and Indigenous institutions**
- **Economic and social rights, including health**
- **Implementation and redress**
- **Culture, religion and language**
- **Education and media**

Research Policy Guide

ABORIGINAL SELF-GOVERNMENT



THE GOVERNMENT OF CANADA
DEPARTMENT OF INDIAN AFFAIRS
OTTAWA, ONTARIO

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

Canada

**Government of Canada's
Approach to Implementation of
the Inherent Right and the
Negotiation of Aboriginal Self-
Government (1995):**

**The Federal so-called “Inherent
Right” Policy**

**From 2019 AFN Deck on Inherent Right to Self-Government
Presented by: Alberta Regional Chief Marlene Poitras and
Yukon Regional Chief Kluane Adamek**

- **Canada's 1995 policy on the Inherent Right to Self-Government (IRSG)**
 - **Rejects First Nations Sovereignty**
 - **Subordinates Inherent Rights to the Charter**
 - **Denies Inherent Jurisdiction**
 - **Requires individual negotiations over National Principles & International Right of Self-Determination**

**From 2019 AFN Deck on Inherent Right to Self-Government
Presented by: Alberta Regional Chief Marlene Poitras and
Yukon Regional Chief Kluane Adamek**

- **Inherent Right to Self-Government (IRSG) policy was mirrored in Canada's 2018 "rights framework" proposed law.**
 - **Requires "negotiation" of Inherent Rights**
 - **Creates 3 Tiers/Lists of subject matters (Negotiable, Delegated, Non-Negotiable)**
 - **IRSG Policy Rejected by Chiefs-in-Assembly**

Call for a First Nations-led process in Resolutions

CANADA BILL C-15

C-15

An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Sponsor
Minister of Justice



HOUSE OF COMMONS 

BILL C-15 – Engagement Process Too Short & Excluded Title & Rights Holders

- Bill C-15 was introduced during a pandemic into Parliament on December 3, 2020, after only a **six week “engagement process”**, bypassing the rights holders (Indigenous communities and Nations).
- The federal government focused on National & Regional Indigenous Organizations.
- This is not the standard for Free, Prior, Informed, Consent or respectful of our right of self-determination. This brings disrepute to the process and **our Peoples will have questions about being excluded and the short process.**

WHAT IS CONTENT OF BILL C-15?

- Bill C-15 is a Federal law that received Royal Assent on June 21, 2021.
- **PREAMBLE**-The Preamble although positive, does not contain binding obligations, preambles can have significant interpretative value. The legal effect of the preamble is confirmed by section 13 of the **federal Interpretation Act**, which says that:
 - *“The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.”*
- The main criticism of Bill C-15 is that some elements of the preamble should be repeated in the body of the legislation in order to give it greater prescriptive value & legal weight. There are **seven main, operative sections of Bill C-15**.
- **SECTION 1-TITLE-United Nations Declaration on the Rights of Indigenous Peoples Act. (UNDRIPA)** Bill C-15 is also referred to as **United Nations Declaration Act (UNDA)**.

WHAT IS CONTENT OF BILL C-15?

SECTION 2(2)-RIGHTS OF INDIGENOUS PEOPLES-maintains the common law interpretation of section 35(1) which is heavily based on the colonial **Doctrine of Discovery**. This section was not amended to reject the **Doctrine of Discovery** only the Preamble was amended to reject it, and section 35(2) of the Constitution Act, 1982, meaning Aboriginal Peoples **OF CANADA**.

SECTION 3-DESIGNATION OF MINISTER-David Lametti, Minister of Justice is the lead Minister identified as section 3, the federal Cabinet can assign any Minister “for the purposes of any provision of this Act.” The Ministers of Indigenous Services Canada and Crown-Indigenous Relations are supporting Minister Lametti, in implementing Bill C-15 Action-Plan.

WHAT IS CONTENT OF BILL C-15?

- **SECTION 4-PURPOSE OF ACT-**(a) **affirm the Declaration** as a universal international human rights instrument with application in Canadian law.
- **[4(a) confirms that the Declaration can be applied by Canadian courts. This principle already exists in Canadian law, so Article 4(a) is merely an affirmation of the status quo.]**
- (b) **provide a framework** for the Government of Canada's implementation of the Declaration.
- **[4(b) specifies that the objective is "to provide a framework" for implementation by the Canadian government. The purpose of Bill C-15 is not to implement the Declaration, but rather to provide a framework for its implementation in the future. C-15 is not an immediate implementation of the Declaration.]**
- **SECTION 5-MEASURES FOR CONSISTENCY OF LAWS WITH UNDRIP-**The Government of Canada will have to "take all necessary steps" to make federal laws consistent with the Declaration. [NOTE: There is no immediate implementation of the Declaration, this section establishes an ongoing process of working with Indigenous peoples for legal review and reform.]

WHAT IS CONTENT OF BILL C-15?

- **SECTION 6-ACTION-PLAN**-This section of the Bill C-15 gives the government of Canada the dominant role in developing an “action-plan” to implement UNDRIP in the future, 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. [**B.C. gov’t is now the only province that has Bill 41 the DRIPA Law to interpret UNDRIP.**]
- **SECTION 7-REPORTING TO PARLIAMENT**-on measures taken and the action-plan. Canada controls the pen in preparing the Annual Report.

Bill C-15 - Amendments

House of Commons made several amendments to text of Bill C-15. The Senate did not. The Liberals & NDP rejected First Nations proposed amendments to strengthen the Bill.

Most of the amendments applied to the preamble, although there are two substantive changes to the provisions of Bill C-15 [in section 6] listed here. Amendments include:

references to racism and systemic racism in the preamble;

expansion of the preamble to identify the doctrines of discovery and terra nullius as “racist, scientifically false, legally invalid, morally condemnable and socially unjust”;

recognition in the preamble that Aboriginal and Treaty rights are capable of evolution and growth and are not frozen;

reduction of the time limit for preparing the action plan from three to two years [section 6]; and

the action plan must include measures to address racism and systemic racism [section 6].

Justice Canada's United Nations Declaration Act - Draft Action-Plan

- Justice Canada's Draft Action-Plan is organized into four chapters:
- *1. Shared Priorities*
- *2. First Nations Priorities*
- *3. Inuit Priorities ("this section is pending further co-development")*
- *4. Metis Priorities*
- The Draft Action-Plan contains departmental measures and lists the responsible department(s), or if All Departments are responsible.

United Nations Declaration Act - Draft Action-Plan

- This **Shared Priorities chapter** of the draft action-plan contains overarching Pan-Indigenous measures:
- **A. Legislated Priorities**
- *Measures for Ensuring that the laws of Canada are consistent with the UN Declaration*
- *Addressing injustices, prejudice, violence, systemic racism and discrimination*
- *Promoting mutual respect and understanding as well as good relations, including through human rights education*
- *Ensuring oversight and accountability on the implementation of the Declaration*
- *Monitoring the implementation of the Action Plan and reviewing and amending the Plan*

Self-Determination, Self-Government and Recognition of Treaties (art. 3, 4, 37)

- *23 Issue a public statement of Canada's rights-based approach for the negotiation of treaties, agreements and other constructive arrangements to replace the Comprehensive Land Claims and Inherent Right Policies.*
- *24 Co-develop approaches for the implementation of the right to self-determination through negotiated agreements, new policies and legislative mechanisms.*
- *25 Continue co-development of Canada's Collaborative Self-Government Fiscal Policy*
- *26 & 27 Continue co-development of Canada's Collaborative Modern Treaty Implementation Policy*
- *28 Engage with partners on the co-development of a Service Transfer Policy Framework*
- *29 Continue to implement the Act respecting First Nations, Inuit and Métis children, youth and families*
- *30 Continue to support Indigenous Data Sovereignty*

United Nations Declaration Act - Draft Action-Plan Lands, Territories & Resources (art. 10, 26, 27, 28, 30, 32)

- *31 Develop guidance on engaging with Indigenous peoples on natural resources projects in consultation and collaboration with Indigenous partners, and in collaboration with provinces, territories, and industry*
- *32 Work closely with Indigenous peoples to develop and implement actions to ensure Indigenous peoples and their communities equitably and consistently benefit from natural resource development that occurs on Indigenous lands.*
- *33 Advance co-development of options to enable Indigenous peoples to harvest within Parks Canada-administered heritage places in a manner that respects and supports the implementation of Indigenous protocols and enforcement.*
- *34 Pursue amendments and reforms of fisheries legislation, regulation or policies to support self-determination and meaningful implementation and exercise of Indigenous fishing rights.*
- *35 Enhance collaborative tools agreements and transparent approaches to better deliver on the collaborative design, development, delivery and management of fisheries*

United Nations Declaration Act - Draft Action-Plan Lands, Territories & Resources (art. 10, 26, 27, 28, 30, 32)

- *36 Prioritize funding for Indigenous partners to support their capacity to provide fisheries, habitat, science, and oceans and marine-related services, and support participation in advisory and co-management processes and decision-making tied to aquatic resources and oceans management.*
- *37 Develop and implement legislative, policy or program supports to further empower fisheries guardians in line with community needs.*
- *38 Develop and employ mechanisms that respect and incorporate Indigenous Knowledge as a distinct knowledge system in the management of fisheries, fish habitat, conservation, marine safety and protection of the marine environment*
- *39 Implement the Pacific Salmon Strategy Initiative (PSSI) to protect and revitalize salmon populations and their habitats in B.C. through meaningful collaboration and partnerships with Indigenous groups and BC/Yukon partners.*

United Nations Declaration Act - Draft Action-Plan

First Nations Priorities

- *80 Continue work underway with First Nations partners to provide sufficient, predictable and flexible funding in support of closing socioeconomic gaps and advancing self-determination*
- *81 Continue to co-develop options for reform of the Specific Claim program, and the development of a reformed specific claims resolution process*
- *82 Co-develop amendments to the First Nations Fiscal Management Act (FNFMA)*
- *83 Co-develop a redesign of the Additions to Reserve Policy*
- *84 Support the adoption of Bill C-38, which seeks to address discrimination in the registration and membership provisions of the Indian Act.*
- *85 Co-develop a collaborative consultation process on a suite of broader reform, relating to registration and band membership issues, prior to any transition away from the Indian Act...the Act will never be fully aligned with UNDA. For Canada's laws to fulfill UNDA, the Indian Act must be repealed.*

United Nations Declaration Act - Draft Action-Plan

First Nations Priorities

- *86 Advance the co-development of federal legislation that recognizes First Nations police services as essential services, and provides them with adequate funding*
- *87 Collaborate with First Nation communities to create viable and respectful alternatives to the Indian Act in support of advancing reconciliation and First Nations self-determination*
- *88 Continue to explore options with First Nations on their proposal for CMHC to transfer the care and control of funding for on-reserve housing programs to First Nations*
- *89 Support initiatives aimed at increasing First Nations control over service delivery, which represents an opportunity to foster a more accessible health care system for the communities they serve, ensuring that health services are high quality and culturally safe*
- *90 Continue collaboration with First Nations organizations on a sustainable approach to transfer First Nations health programs and services through various health transformation initiatives in the following jurisdictions: Manitoba, Nova Scotia, Quebec and Ontario*

United Nations Declaration Act - Draft Action-Plan

First Nations Priorities

- *91 Continue to improve the Income Assistance program in a way that is more responsive to the needs of individuals and families living on-reserve, including more comprehensive income assistance programming that at least meets provincial comparability*
- *92 Continue to work with First Nations on closing infrastructure gaps on reserve – based on priorities identified by communities - with the goal of improving current service delivery (including increasing the number of housing units) as well as supporting increased First Nations capacity for housing governance, management, and planning*
- *93 Continue to support lifting of short and long term drinking water advisories*
- *94 Continue efforts to advance water and wastewater service transfer and support self-determined service delivery models in First Nations communities*
- *95 Ensure the implementation of the Accessible Canada Act with respect to First Nations Band Councils is culturally appropriate, and that First Nations are supported in advancing accessibility at the community level*
- *96 Support First Nations control of First Nation education and self-determined education approaches at many levels*

Conclusion

- The **Justice Canada Draft Action-Plan** will be finalized and presented to Parliament in June 2023. These federal policy measures are going to set the federal government's—particularly the bureaucracy's—policy, legislative & budgetary agenda for years, even decades, to come, to finish Canada's colonial project—what the **Indian Act** started, the assimilation of First Nations into Canada's body politic.
- Because the Supreme Court of Canada has placed the burden of proof on First Nations, I've been advising Chief and Councils across Canada to use the methodology of conducting cultural & historical research, mapping and planning to develop self-determination and territorial plans for traditional lands, territories & resources.
- In my opinion, since the federal government is using its **CANDRIP Action-Plan** as the reason to repeal the **Indian Act** and impose its definition of **UNDRIP**, those First Nation communities who do not take the approach of self-determination and territorial plans through community research, mapping and planning, will end up as **Indigenous Municipal Governments** under **Canada's definition of self-government** and the federal policy to eliminate Indian Reserves by transitioning reserves into private property (fee simple) under the **Indigenous Land Title draft legislation BEING PREPARED BY Canada and the First Nations Tax Commission.**