**CANADA’S CONTRIBUTION TO THE STUDY OF THE UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES (EMRIP) ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS, BETWEEN INDIGENOUS PEOPLES AND STATES, INCLUDING PEACE ACCORDS AND RECONCILIATION INITIATIVES, AND THEIR CONSTITUTIONAL RECOGNITION**

Section 35 of Canada’s Constitution Act, 1982 recognizes and affirms the rights of Indigenous peoples, including those set out in treaties signed with the Crown. Reconciliation with First Nations, Inuit and Métis is the fundamental purpose of section 35. The Government of Canada takes these constitutional obligations and the goal of reconciliation seriously. However, the Government of Canada has seen that constitutional provisions alone are not enough – we need to breathe life into them through action and commitment to the values they embody. The United Nations Declaration on the Rights of Indigenous Peoples (the “Declaration”), including article 37 on the right to the recognition, observance and enforcement of treaties, can help us do this work with rights holders and others to ensure that Canadian laws protect and promote the rights of Indigenous peoples, consistent with the Declaration and section 35.

The United Nations Declaration on the Rights of Indigenous Peoples Act (the “Act”), which entered into force on June 21, 2021, provides a framework for the Government of Canada to implement the Declaration. The Act affirms the Declaration as an international human rights instrument that can help interpret and apply Canadian law. It consists of three specific statutory obligations: taking all necessary measures to ensure the consistency of federal laws with the Declaration (s. 5); developing and implementing of an action plan (s. 6); and tabling annual reports on progress to Parliament (s. 7). All three obligations must be carried out in “consultation and cooperation with Indigenous peoples”.

As the Government of Canada works on the development of the action plan and the measures needed to ensure federal laws are consistent with the Declaration in collaboration with Indigenous peoples, we expect the discussions will include identifying new, innovative processes and creative ways of working together. Strengthened partnerships will enhance our collective capacity to effectively implement the Act and ultimately, contribute to reconciliation.

To further inform the specifics of the study, we welcome the opportunity to share the below information and links to Government of Canada content:

1. The types of treaties, agreements and other constructive arrangements that Indigenous peoples have made or are making with States, including peace accords and reconciliation initiatives, and their constitutional recognition.

* [Section 35 of the Constitution Act 1982 - Background and Key messages](https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/inan-jan-28-2021/inan-section-35-consitution-act-1982-background-jan-28-2021.html)
* [Historic Treaties in Canada](https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231#chp3)
* [Modern Treaties in Canada](https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231#chp4)
* [Recognition of rights discussion tables](https://www.rcaanc-cirnac.gc.ca/eng/1511969222951/1529103469169)
* [Ongoing negotiations](https://www.rcaanc-cirnac.gc.ca/eng/1100100030285/1529354158736)

1. The barriers (structural, political, economic and social) to, and the enabling conditions necessary to promote, constructive dialogue between States and Indigenous peoples for the establishment of treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition.

* Indigenous Land Rights: Towards Respect and Implementation: Report of the Standing Committee on Indigenous and Northern Affairs - FEBRUARY 2018 42nd PARLIAMENT, 1st SESSION: The Standing Committee on Indigenous and Northern Affairs (INAN) undertook a study of comprehensive land claims agreements, also known as ‘modern treaties,’ and self-government throughout Canada, the current processes being used across Canada, and how they are currently being executed, including the comparative benefits and challenges of different approaches to negotiations. Issues identified and recommendations for action include: length of negotiations, funding, and certainty and surrender of rights. The link also includes testimony on new approaches to negotiation that expedite the process (e.g., creation of Recognition of Rights discussion tables). Link: [INDIGENOUS LAND RIGHTS: TOWARDS RESPECT AND IMPLEMENTATION (ourcommons.ca)](https://www.ourcommons.ca/Content/Committee/421/INAN/Reports/RP9684841/inanrp12/inanrp12-e.pdf)
* Government of Canada Response to the Standing Committee on Indigenous and Northern Affairs: Indigenous Land Rights: Towards Respect and Implementation: [Government Response - 8512-421-356 - House of Commons of Canada (ourcommons.ca)](https://www.ourcommons.ca/DocumentViewer/en/42-1/INAN/report-12/response-8512-421-356)
* Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia (2019):Building on the commitment to develop a new policy to replace the Comprehensive Land Claims and Inherent Right policies, Canada enshrined the shift in negotiation approaches through the introduction of the co-developed *Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia* in 2019, which replaces the Comprehensive Land Claims and Inherent Right policies in British Columbia (BC). This policy is a key example of a policy that has been co-developed between governments and Indigenous partners. A central feature of the policy is that negotiations recognize the continuation of rights without modification, surrender or extinguishment when a treaty is reached. Under this policy, future treaties, self-government agreements and other constructive arrangements will set out approaches for reconciling Crown and Indigenous rights based on co-existence that can evolve over time. It also provides greater flexibility to develop agreements incrementally. Link: [Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia (rcaanc-cirnac.gc.ca)](https://www.rcaanc-cirnac.gc.ca/eng/1567636002269/1567636037453)
* Description of RIRSD discussion tables: [Recognition of rights discussion tables (rcaanc-cirnac.gc.ca)](https://www.rcaanc-cirnac.gc.ca/eng/1511969222951/1529103469169)
* Collaborative self-government fiscal policy: [Canada’s collaborative self-government fiscal policy (rcaanc-cirnac.gc.ca)](https://www.rcaanc-cirnac.gc.ca/eng/1566482924303/1566482963919)
* Nation Re-building Program: [Nation Rebuilding Program (rcaanc-cirnac.gc.ca)](https://www.rcaanc-cirnac.gc.ca/eng/1530880050808/1530880135933)
* Loan forgiveness news releases and announcements from the Budget:

[Budget 2019 : Chapter 3](https://www.budget.gc.ca/2019/docs/plan/chap-03-en.html)

[Grants to reimburse treaty negotiation loans to Indigenous groups who have settled a comprehensive land claim (rcaanc-cirnac.gc.ca)](https://www.rcaanc-cirnac.gc.ca/eng/1604958267840/1604958306918)

[Appearance before the Standing Committee on Indigenous and Northern Affairs: 2019-20 Supplementary Estimates (B) 2020-21 Main Estimates Crown Indigenous Relations (rcaanc-cirnac.gc.ca)](https://www.rcaanc-cirnac.gc.ca/eng/1594224807613/1594224840772)

* UNDRIP and Treaty Rights: The following report highlights issues raised by Indigenous peoples regarding UNDRIP implementation and treaty rights, including the need to ensure that implementation of the Declaration respects and contributes to the recognition, observance and enforcement of treaties. Link: [What We Learned Report ENG.pdf (justice.gc.ca)](https://www.justice.gc.ca/eng/declaration/wwl-cna/pdf/What%20We%20Learned%20Report%20ENG.pdf)
* [Principles respecting the Government of Canada's relationship with Indigenous peoples](https://justice.gc.ca/eng/csj-sjc/principles-principes.html)

1. National mechanisms with the competence to resolve conflicts between States and Indigenous peoples about treaties, agreements, and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition.

* [Reconciliation](https://www.rcaanc-cirnac.gc.ca/eng/1400782178444/1529183710887)
* [The Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples](https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/dclip-dlcpa/litigation-litiges.html)
* [Specific Claims Tribunal Canada](https://www.sct-trp.ca/hom/index_e.htm)

1. New joint problem solving approaches that facilitate constructive dialogue between States and Indigenous peoples.

* [Statement of Principles on the Federal Approach to Modern Treaty Implementation](https://www.rcaanc-cirnac.gc.ca/eng/1436288286602/1539696550968)
* [New permanent bilateral mechanisms](https://www.rcaanc-cirnac.gc.ca/eng/1499711968320/1529105436687)