

Item 5 (d). Human rights dialogue with the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples

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Human Rights for Off-Reserve and non-Status Indigenous People in Canada:

- Canada is currently in the process of drafting legislation to implement UNDRIP, an agreement to which Canada is a signatory.
  - As a signatory, Canada has already acknowledged the legitimacy of UNDRIP as a tool of human rights domestically.
- Prior to UNDRIP, Indigenous rights have been acknowledged under “Royal Proclamation” of 1763, the “British North America Act” of 1867, “Constitution Act” of 1982, and treaties with Indigenous Peoples, in addition to court cases
  - Royal Proclamation – acknowledges pre-existing Indigenous title over lands unless ceded by treaty, and that only treaties with the Crown would be legitimate.
  - Treaties include “Peace and Friendship” treaties, numbered treaties, and modern treaty and land settlement processes, among others;
  - Constitution Act of 1867 section 91(24) – Establishes “Indians and land reserved for Indians” as an area of Federal Responsibility;
  - Constitution Act 1982, section 35 – Establishes “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”, both present and future;

Human Rights Legislation in Canada:

- Human rights legislation mechanisms in Canada include:
  - Canadian Human Rights Commission
  - Canadian Human Rights Tribunal
  - Other provincial Human Rights mechanisms
- Canadian Human Rights Commission (CHRC)
  - The Canadian Human Rights Commission operates independently from government.
  - “As Canada’s human rights watchdog, the Commission is responsible for representing the public interest and holding the Government of Canada to account on matters related to human rights”.
  - “The Canadian Human Rights Act gives the Commission the authority to research, raise awareness and speak out on any matter related to human rights in Canada.”
- Canadian Human Rights Tribunal (CHRT)
  - “The Canadian Human Rights Tribunal (CHRT) has a statutory mandate to apply the Canadian Human Rights Act (CHRA) based on the evidence presented and on the case law.”
  - “Created by Parliament in 1977, the Tribunal legally decides whether a person or organization has engaged in a discriminatory practice under the Act. The purpose of the CHRA is to protect individuals from discrimination.”
  - “The CHRT applies these principles to cases that are referred to it by the Canadian Human Rights Commission (CHRC)”
- These mechanisms provide alternative approaches to court challenges, which can be slow and costly. However the responsiveness and impact of different options varies, and can create challenges for Indigenous communities looking at the best mechanism for defending their rights.

Supreme Court of Canada - Daniels Decision - 2016 :

- Unanimous decision by the 9 Supreme Court Justices.

- Acknowledged:
  - “Both federal and provincial governments have, alternately, denied having legislative authority over non-status Indians and Métis.”
  - “This results in these Indigenous communities being in a jurisdictional wasteland with significant and obvious disadvantaging consequences.”
  - “It was already well established in Canadian law that the federal government was in a fiduciary relationship with Canada’s Aboriginal peoples and that the federal government had a duty to consult and negotiate with them when their rights were engaged.”
- Declared:
  - “Non-status Indians and Métis are “Indians” under s. 91(24) and it is the federal government to whom they can turn.”

#### Human Rights Challenges:

- Self-Determination and the right to choose representatives to engage in negotiations with the government have been a fundamental right acknowledged since the Royal Proclamation of 1763 and affirmed under UNDRIP.
- Non-Status and off-Reserve Indigenous communities continue to lack recognition by the Government of Canada and Provincial-level governments, despite legal recognition of their members as “Indians” under Daniels and ongoing negotiations with the present government.