

United Nations Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
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Monday 12 July 12 – Africa and North America Regions

Item 8: Draft Report on efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: Indigenous Peoples and the Right to Self-Determination

Statement from the British Columbia Treaty Commission

Speaker: Chief Commissioner Celeste Haldane

Thank you EMRIP expert members for all your work to complete the draft report. We appreciate the opportunity to provide input and offer the following for the final report on *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: Indigenous Peoples and the Right to Self-Determination*.

1. To update the report with the recent status of the specific legislation reference (para 48), we propose the following to the report:

48. In 2019, British Columbia, Canada, passed the Declaration on the Rights of Indigenous Peoples **Act¹¹³ requiring the provincial government to take steps** to implement the United Nations Declaration on the Rights of Indigenous Peoples in state law. **On June 21, 2021, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples was passed by the Parliament of Canada, requiring the federal government** to take steps to implement the Declaration. Both of those pieces of legislation were developed jointly with indigenous peoples. In 2020, the Government of Sweden proposed a draft bill to the parliament, entitled “Consultation on Matters concerning the Sámi People”, in consultation with the Sámi Parliament. It aims to give the Sámi people the right to be consulted in matters of special significance to them.¹¹⁴

In addition, we emphasize the inclusion of the Joint Statement from the Coalition for the Human Rights of Indigenous Peoples* into the final report.

2. To provide greater clarity on self-determination through the enforcement of Indigenous laws (para 49); and clarity on the specific policy and reference (para 50), we propose the following to the report:

49. Historical and modern treaties are a feature of indigenous peoples’ self-determination, defined by a Canadian constitutional lawyer as “a constitutionally protected sharing of sovereignty among the signatories to the treaty”.¹¹⁵ Such countries include Canada, New Zealand and the United States, and interestingly, one indigenous people, the Onondaga Nation, has signed treaties with both Canada and the United States. In New Zealand, an indigenous-led process is seeking constitutional transformation for equality of governance, and, similarly in Australia, constitutional recognition of an indigenous peoples’ voice to Parliament is being pursued, given the vulnerability of possible state and territorial treaties to being overridden by the Federal Government. A guiding principle for negotiations is a recognition of the right to self-determination,¹¹⁶ and the consultation processes have been led and designed by indigenous

people.¹¹⁷ **The ability to enforce laws is essential to self-government and self-determination.** In Canada, under modern treaties, some indigenous peoples indicate that, although they have the authority to make laws, they lack the authority to adjudicate and enforce their laws, and there is no **adequate state funding and resources to support effective enforcement of indigenous laws. Providing adequate funding and changing existing domestic laws, regulations, and mechanisms to recognize and respect Indigenous laws on an equal footing with domestic laws and regulations will assist in reconciling this enforcement gap.** ¹¹⁸

^{115.} Submission from British Columbia Treaty Commission. See

www.bctreaty.ca/sites/default/files/LegalOpinionHoggMillenTreatiesandShareSovereigntyCanada.pdf.

^{118.} Submission from British Columbia Treaty Commission

50. In 2019, Canada, British Columbia and the First Nations Summit endorsed a new **Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia**, ¹¹⁹ as a framework, inter alia, to implement the Declaration, including the rights to free, prior and informed consent and self-determination. In 2017, through the execution of the Canada-Métis Nation Accord, Canada and the Métis Nation agreed that they must be involved as partners in any legislative or policy development that affects the lives and rights of Métis Nation citizens.¹¹⁹

^{119.} Submission from British Columbia Treaty Commission. See

www.bctreaty.ca/sites/default/files/RecognitionandReconciliationofRightsPolicyforTreatyNegotiations.pdf.