

United Nations Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Fourteenth Session (Virtual) July 12 - 16, 2021

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

British Columbia Treaty Commission Submission

Thank you EMRIP expert members for all your work to complete the draft report, and for providing advice and expertise to better understanding of the provisions United Nations Declaration on the Rights of Indigenous Peoples.

We have reviewed the draft report and appreciate the opportunity to provide input. We share the following suggested edits 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*.

RECOMMENDATIONS

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 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, a second piece of domestic Canadian legislation, 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

2. To provide greater clarity on self-determination as exercised 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 an essential**

component 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. Some adjustments to regulations and mechanisms to include Indigenous nations can greatly assist in supporting self-determination.** 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.