**United Nations Human Rights Council**

**Office of the High Commissioner on Human Rights**

**October 31, 2022**

*Calls for Submissions of written contribution to the expert workshop on possible ways to enhance the participation of indigenous peoples in the work of the Human Rights Council.*

**British Columbia Treaty Commission submission on Enhanced Participation of Indigenous Peoples**

**INTRODUCTION**

**The British Columbia Treaty Commission** (“Treaty Commission” or “BCTC”) **submission focuses on elements identified in the call for written submission questions0F[[1]](#footnote-1) and will provide examples and recommendations with regards to possible ways to enhance the participation of Indigenous peoples in the work of the Human Rights Council (“HRC”). The BC Treaty Commission will draw on its 30 years’ experience in facilitating negotiations to recognize Indigenous rights and title, and how the Canadian state in partnership with the province of British Columbia continues to strengthen their relationship with Indigenous peoples.**

**BACKGROUND**

The BC Treaty Commission is an independent body that oversees treaty making in British Columbia, Canada.1F[[2]](#footnote-2) An independent commission is at the core of the BC treaty negotiations process. The Treaty Commission is the only tripartite statutory body2F[[3]](#footnote-3) in Canada whose mandate is to support reconciliation. It is through the 30 years of experience working with Indigenous nations in the made-in-BC treaty negotiations process that affords the Treaty Commission unique insights when it comes to Indigenous nations participating in the negotiations process. A part of this unique perspective stems from is the process created by the Treaty Commission for Indigenous governing bodies to engage in treaty negotiations. 3F[[4]](#footnote-4) As well as the criteria that the Treaty Commission established to confirm the organizational structure of the Indigenous governing body.4F[[5]](#footnote-5)

**HRC - TOPICS**

(1) Venue of participation.

(2) Participation modalities.

(3) Selection mechanism.

(4) Selection criteria.

**1. VENUE OF PARTICIPATION**

The United Nations (UN) has an important and integral continuing role to play when it comes to promoting and protecting the rights of Indigenous peoples. As such, ultimately Indigenous peoples must have the ability to participate in all UN mechanisms, including the General Assembly to ensure that Indigenous peoples can meaningfully engage in areas that directly impact Indigenous peoples, their communities, their lands, resources, culture, languages, spirituality, and mobility.

In the interim, the BC Treaty Commission supports and recommends that Indigenous peoples should have the right to participate effectively at the HRC and its subsidiary bodies, which is consistent with Article 18, 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). The current venues of participation: PFII, EMRIP, and engagement with the Special Rapporteur on the rights of Indigenous Peoples and the UN Voluntary Fund for Indigenous Peoples have been helpful, however an incremental approach to enhance participation can include interactive dialogues with other UN special rapporteurs, and have the ability to participate in treaty body processes.

Indigenous peoples participating body or entity must have a distinct status which should be different than observer or Non-Governmental Organizations (NGO) status. Indigenous peoples are distinct and enhanced status is necessary to provide adequate and effective abilities. This is consistent with Article 3 of the UN Declaration which states that indigenous peoples have the right to self-determination and this status would reflect this.

**2. PARTICIPATION MODALITIES**

The Treaty Commission supports distinct status for Indigenous peoples through representative bodies or entities within the HRC in the initial term and ultimately within the UN system overtime. However, the scope of modalities for participation largely depends on the accreditation status.

Currently, Indigenous peoples who are not accredited with NGO status through ECOSOC are unable to participate in HRC informal negotiations of resolutions, HRC discussions such as, intersessional meetings and plenary. If the Indigenous participation status is one similar to an observer status, then it is not expected that “voting” on resolutions will be recognized. However, all other aspects of participation such as developing or amending resolutions, speaking to resolutions, or otherwise invited to speak, should be accommodated in a manner similar to other bodies and entities which are granted accreditation status as “observers” or a category similar to it. Cautiously, NGO status still does not provide adequate abilities for Indigenous peoples bodies and entities, a more distinctive status will assist in closing the current gap and address effective Indigenous peoples participation.

Practicalities need to be taken into account to provide for broad participation within the HRC, and provide certainty of participation once accredited. This must include accreditation for a multi-year term - no less than 5 years - and for accreditation which allows for the accredited Indigenous bodies to not have to apply for accreditation every year and can instead focus on effective participation. The Treaty Commission rrecommends accreditation for a term no less than 5 years and which allows for the accredited Indigenous bodies and, when approved, will be sufficient for and will apply to HRC and all of its subsidiary bodies.

Indigenous peoples’ representative bodies and entities need the status to be heard, to be able to take the floor during HRC sessions and intersessional meetings, and to provide follow up written responses. This is especially necessary when there is any proposed resolution being considered by the voting body which seeks to undermine, violates, or is offensive to Indigenous peoples’ human rights. This is another reason for Indigenous peoples participating bodies and entities’ views and positions to be recognized, respected, and acted on. Also, the ability through a distinct status would afford the opportunity for Indigenous peoples’ representative bodies or entities to participate the development of resolutions, so there should not be resolutions coming forward that infringe on Indigenous peoples human rights.

**3. SELECTION MECHANISM**

Given the fact that all UN bodies establish their respective accreditation and participation criteria it might be useful to have a separate secretariat or accrediting body responsible for approving the enhanced accreditation status for an Indigenous peoples’ representative body or entity. If this is not feasible, then the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) Secretariat should continue the accreditation process. Whether EMRIP carries out the enhanced accreditation process or there is a new secretariat, the HRC and the EMRIP should support and recommend overall guiding principles for approving accreditation status for an Indigenous peoples’ governing body or entity participation in HRC and EMRIP sessions.

These guiding principles then can be applied in all subsequent HRC subsidiary bodies and their processes and proceedings. The overall guiding principles for approving accreditation status should reflect all the rights affirmed in the UN Declaration and the Preamble. With special attention to the right to be free from discrimination (Article 2), the right to self-determination (Article 3, 5 and 18), the right ensuring equal protections and equal application of the UN Declaration (Article 1, 2, 22 and 44), and the right for Indigenous peoples to organize themselves in a manner that is consistent with their distinct culture (Article 33 and 34).

Indigenous governments and representative bodies have long been on the forefront in advancing the recognition of their legitimate status as Indigenous governing bodies and as Indigenous governments. As such they have been calling for action for the recognition of their place within the UN framework. For instance, in Canada, there are 25 modern treaties which some contain provisions for self-government5F[[6]](#footnote-6). Of those 25, there are eight modern treaties in British Columbia that are fully self-governing. The eight modern treaty first nation governments have established an alliance and collectively engage with the State and the province to address key issues in common.6F[[7]](#footnote-7) The modern treaty first nation governments in Canada are examples of Indigenous peoples representative governing bodies and entities.

With respect to Indigenous peoples who have not established or confirmed their own self-governing entities or self-government bodies, the NGO option is still a viable option and should continue to be available if the criteria to obtain enhanced participation status is based solely on self-governing bodies and/or entities. However, their participation and accreditation status in the UN General Assembly (UNGA), HRC, and subsidiary bodies should not be different than that for Indigenous self-government bodies and other Indigenous governing entities.

Another consideration is the development of a criteria for “international Indigenous governments” bodies which would self-determine and be advanced by Indigenous self-government bodies in a collective fashion. Such “international Indigenous governments” bodies may apply for “observer” status in the UN under existing criteria.

One final note, there should not be State sanctioned veto(s) with regards to what body obtains their distinct status under the enhanced Indigenous peoples participating bodies or entities. The Treaty Commission cautions and suggests that there should not be criteria nor method whereby State members need to provide accreditation support as a pre-requisite for an Indigenous peoples participating bodies or entities to obtain status. No State should have influence or be a deciding factor with regards to what Indigenous peoples participating bodies or entities gains status. The aforementioned undermines the spirit and intent behind the UN Declaration. It also undermines the commitment to engage on ways to enhance Indigenous participation in the work of the HRC and the Report by the Secretary General.7F[[8]](#footnote-8)

**4. Selection Criteria**

The Treaty Commission recommends treaties, agreements and other constructive agreements between States and Indigenous peoples, be considered for one criteria.

Multi-lateral bodies such as the BC Treaty Commission have advanced positions supporting the calls made by Indigenous governments. BCTC provided two recommendations on May 9-20, 2016 to the UN PFII calling for: modern treaties negotiated by Indigenous peoples with the State be determined to be legitimate expressions of the right to self-determination and; that States support the resolution of “inter-Indigenous peoples resolution to overlapping and shared territory disputes.”

Canadian courts and various commissions have also addressed the issue of Indigenous sovereignty and jurisdiction. In Haida Nation v. British Columbia (2004) the Supreme Court of Canada confirmed that “Treaties serve to reconcile *pre-existing* Aboriginal sovereignty with *assumed* Crown sovereignty”. And in a 2017 legal opinion on “shared sovereignty” for BCTC, the law firm Blakes advised:

“Aboriginal peoples do not stand in opposition to, nor are they subjugated by, Canadian sovereignty.”

High level relationships, such as Treaties, agreements and other constructive agreements, however they are expressed, that are based on a relationship between sovereigns – State sovereignty and Indigenous sovereignty and authority - should be one threshold criteria for accreditation. This is for several reasons. One, the relationship is already supported by the State, and while not a necessary pre-requisite for Indigenous inherent authority, State partnership elevates these relationships. Second, many questions about the mandate and representative nature of the Indigenous body have been already recognized and affirmed through the process of the negotiation of the relationship.

Indigenous peoples, their inherent sovereignty and authority do not require state recognition, however the fact of these relationships (through treaties, agreements and other constructive arrangements) indicates threshold accreditation. The BC Treaty Commission supports the view that there should be no criteria nor method whereby the State needs to provide accreditation support as a pre-requisite for an **I**ndigenous peoples participating bodies or entities to obtain status. No State should have influence or be a deciding factor with regards to what **I**ndigenous peoples participating bodies or entities gains status. This criteria consideration should enable Indigenous peoples participation, not be a barrier.

1. https://www.ohchr.org/en/calls-for-input/2022/call-submission-written-contribution-expert-workshop-possible-ways-enhance [↑](#footnote-ref-1)
2. The Treaty Commission was established in 1992 by agreement among the governments of Canada and British Columbia and the First Nations Summit [collectively referred to as the “Principals”], with the signing of the British Columbia Treaty Commission Agreement, 1992 [the “BCTC Agreement”]. [↑](#footnote-ref-2)
3. Federal and provincial legislation was enacted to further strengthen the basis for the Treaty Commission. These Acts not only form the legal foundation for the BCTC, but also ground the BC treaty negotiations process. See the federal British Columbia Treaty Commission Act, S.C. 1995, c.45, and the provincial Treaty Commission Act [RSBC 1996] c. 461. [↑](#footnote-ref-3)
4. https://www.bctreaty.ca/negotiation-processes [↑](#footnote-ref-4)
5. https://www.bctreaty.ca/policies/stage-1-filing-statement-intent-negotiate-treaty [↑](#footnote-ref-5)
6. https://landclaimscoalition.ca [↑](#footnote-ref-6)
7. https://moderntreatyalliancebc.ca [↑](#footnote-ref-7)
8. Enhancing the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them

   <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/196/88/PDF/N2019688.pdf?OpenElement> [↑](#footnote-ref-8)