**British Columbia Treaty Commission submission to the to the United Nations Expert Mechanism on the Rights of Indigenous Peoples – Study on Indigenous Peoples’ Rights in the Context of Borders, Migration and Displacement**

The British Columbia Treaty Commission welcomes the opportunity to provide the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) with the following submission to inform EMRIP’s study on Indigenous Peoples’ Rights in the Context of Borders, Migration and Displacement.

**Background on the BC Treaty Commission**

The BC Treaty Commission advocates and facilitates for the recognition and protection of Indigenous title and rights through modern treaties in the province of British Columbia (B.C.), Canada.

Since 1991, the Treaty Commission’s mandate is to facilitate negotiations, provide funding allocations to First Nations to participate in negotiations with the governments of Canada and British Columbia, and provide public education and information. Recently, our mandate was further strengthened to support the implementation of the UN Declaration on the Rights of Indigenous Peoples.

**Relocation**

There are numerous examples of indigenous peoples in Canada being forcibly relocated.

One example in British Columbia is the Gwa'sala-'Nakwaxda'xw Nations (GNN), who were relocated in the 1960s. This not only impacted these two indigenous nations, but the relocation created a territorial overlap issue with a third, the Kwakiutl First Nation (KFN), as GNN was relocated into the heart of KFN’s traditional territory.

Prior to European contact until the 19th century, the Gwa’sala from Smith Inlet and the ‘Nakwaxda’xw from Seymour Inlet were two separate, though closely related indigenous tribes. In the 1960s both indigenous nations were relocated to the Tsulquate reserve in Port Hardy, B.C. and amalgamated into one First Nation: Gwa’sala-`Nakwaxda’xw Nations.

Prior to amalgamation both nations were geographically isolated from commercial and missionary hubs, compared to neighbouring indigenous nations. The relative isolation had advantages: indigenous religious beliefs, culture, ritual and social organizations were protected and sustained longer than other indigenous nations in the area[[1]](#footnote-1).

During the 1960s, the Canadian federal government stepped up its assimilation policies, which included eliminating any special status for Indians as quickly as possible. Geographic isolation was seen as an impediment to this goal. It was in this context that the amalgamation of small bands into larger units and the relocation of geographically isolated bands to urban and semi-urban locations was encouraged and implemented throughout Canada.

Excerpts from "Gwa’sala-’Nakwaxda’xw Stories” (1997) (see the GNN website[[2]](#footnote-2)) indicate that the Canadian government employed threats of inadequate education and medical care if the GNN did not relocate to Port Hardy. The government also promised new housing, a community hall, a place to moor fishing boats, jobs, and education.

In 1964 the two GNN nations moved to Port Hardy. The federal government did not follow through on its previous financial commitments for the new community. GNN accounts tell of poor infrastructure, social difficulties, hardships relating to food security, over-crowded housing, and negative impacts from increased alcohol consumption. These accounts are supported in an account from a 2013 UBC study[[3]](#footnote-3), which notes the intergenerational impacts of the relocation, including disease epidemics, loss of homelands and culture, destruction of homes, and the impacts of residential schools.

The GNN people survived and persevered. Since 1994, GNN has been negotiating a modern treaty to regain control of lands and resources. However, access to their traditional villages require lengthy boat trips through rough waters, and high transportation costs. This prevents the younger generation from learning and maintaining their culture through a connection to their homelands. Elders have expressed a strong desire to return to their original villages, but capital infrastructure is needed for health safety (water, sewage, power, housing, etc.). Restabilising this connection to their original villages is a priority for GNN, and treaty negotiations provide an opportunity for government to restore this connection.

Overlap issues persist. While some compensation was provided to the Kwakiutl First Nation for loss of reserve lands, the larger impact on the territory remains. As the GNN population increases, and housing and infrastructure needs increase with it, pressure and constraints on community growth create further overlap issues with KFN. Restitution and other mechanisms of redress and assistance are needed to address the overlap issues created by the relocation.

**Interprovincial boundary impacts**

Several indigenous nations in the BC treaty negotiations process have territories that are divided by provincial borders. This creates interjurisdictional challenges for indigenous nations and their efforts at self-government and self-determination. In some cases, rights to lands and resources are only partially addressed due to differing, and sometimes inconsistent policies between government jurisdictions.

The Kaska Nation has traditional territory in northern B.C., the Yukon, and the North West Territories. When the federal government’s jurisdiction is overlaid, there are four different jurisdictions the Kaska must contend with. Implementing self-government in this situation is extremely challenging for indigenous nation-building and self-determination. Movement of Kaska members from one jurisdiction to another, within the Kaska territory, is impeded, particularly when it comes to traditional hunting and harvesting.

Champagne Aishihik First Nations (CAFN) has traditional territory that spans the Yukon and B.C. border, and is a self-governing First Nation with a treaty in the Yukon. Displacement caused by the Spanish flu epidemic in the early part of the 20th century, and prosecution and persecution for pursuing traditional harvesting, hunting, and cultural practices, severed ties with the B.C. portions of its territory. Lands were alienated to third party mining companies, with no recognition or sharing of royalties or taxes. As a consequence, while CAFN has a treaty in the Yukon, restabilising the connection to the B.C. portion of its traditional territory is very difficult.

**Trans-border movement of indigenous peoples**

International border issues also impact indigenous nations in treaty negotiations in British Columbia. Ktunaxa Kinbasket Treaty Council (KKTC) is an indigenous nation with traditional territory in southern B.C. that extends south across the U.S.-Canada border, and east across the provincial B.C.-Alberta border. KKTC is impacted by two nation states and two provincial jurisdictions.

Maintaining cultural connections with members across an international boundary is difficult. For example, bringing traditional cultural regalia, such as eagle feathers, across the border is challenged by different understandings, rules, and laws. The ability to travel freely through the entire traditional territory is restricted by the international border.

Late last year, the Government of Canada, acting on recent reports from a Minister's Special Representative[[4]](#footnote-4) and the Standing Senate Committee on Aboriginal Peoples, recognized that the Canada-U.S. border can present challenges to the mobility, traditional practices, and economic opportunities of First Nations peoples and pose obstacles to their family and cultural ties to Native American communities in the United States. Canada announced it will be implementing measures to address some Canada-U.S. border-crossing issues for First Nations. These measures include: the recruitment of more indigenous border services officers; enhanced training on indigenous cultures for Canada Border Services Agency (CBSA) staff; and strengthened outreach and cooperation by the CBSA with concerned First Nation communities along the Canada-U.S. border.

A memorandum of understanding (MOU) between CBSA and KKTC has proven helpful in addressing issues such as, “the roles and perspectives of the parties; cultural awareness and training; ongoing communications between the parties; and dispute resolution” [[5]](#footnote-5). The MOU also references: “the dutiable status of gifts and other items being imported; the examination and questioning of First Nation individuals; advance notice of ceremonial events requiring cross-border travel; and cooperation concerning the targeting of contraband”[[6]](#footnote-6).

While this MOU is helpful, it is only between Canada and KKTC. The U.S. Government is not a party to the agreement. Training and communications on these issues with the U.S. Government occur, but not in a formalized way as with the MOU.

For KKTC’s ongoing treaty negotiations, having to inform community members that only part of their traditional territory is being recognized and addressed, creates significant challenges.

**Recommendations**

States are encouraged to enter into border agreements with indigenous nations to address nation-specific issues related to mobility, traditional practices, and economic opportunities of indigenous peoples, and to address obstacles to their family and cultural ties across borders.

States are encouraged to eliminate challenges and obstacles to self-government and self-determination created by internal state boundaries, such as multiple and differing jurisdictions, through treaties, agreements and other constructive arrangements. The recognition and implementation of indigenous spheres of exclusive autonomy, self-government, and jurisdiction would assist in eliminating some off these challenges.

States should support the resolution of overlapping claims between indigenous nations created by relocation of indigenous nations, forced or otherwise, with financial and other resources, such as dispute resolution services.

1. <http://www.gwanak.info/about-us/history-vision> [↑](#footnote-ref-1)
2. <http://www.gwanak.info/about-us/history-vision> [↑](#footnote-ref-2)
3. <https://open.library.ubc.ca/cIRcle/collections/graduateresearch/310/items/1.0075782> [↑](#footnote-ref-3)
4. Report on First Nation Border Crossing Issues, August 31, 2017, https://www.aadnc-aandc.gc.ca/eng/1506622719017/1506622893512 [↑](#footnote-ref-4)
5. Report on First Nation Border Crossing Issues, August 31, 2017, <https://www.aadnc-aandc.gc.ca/eng/1506622719017/1506622893512#fn6> [↑](#footnote-ref-5)
6. Report on First Nation Border Crossing Issues, August 31, 2017, <https://www.aadnc-aandc.gc.ca/eng/1506622719017/1506622893512#fn6> [↑](#footnote-ref-6)